

THE CONSTITUTIONAL LAW AND HISTORY OF BROADCASTING IN GREAT BRITAIN

1922 - 1946.

A THESIS

submitted by

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CHAPTER ONE.

The development of the B.B.C. from a Public Utility Company into a Corporation established by Royal Charter.

Events leading up to the formation of the British Broadcasting Corporation.

Broadcasting was made possible by the invention of the thermionic valve shortly before the first world war. The capabilities of this valve were developed by the fighting services and interest in wireless matters was spread among thousands of men who were trained in its wartime use so that a large number of amateurs and wireless firms started radio telephony on an experimental basis as soon after the war as the Post Office could be persuaded to grant the necessary licenses.

Under the Wireless Telegraphy Act 1904 the Post Office was the regulating authority over all transmitting and receiving stations in the United Kingdom. The attitude of the Post Office was extremely cautious and at the first conference of Affiliated Wireless Societies in February 1920 Commander F.C. Loring, R.N., the representative of the Post Office, explained the

delay in granting licenses on the ground that the Post Office, as custodian of the Naval, Military and Air Force and civil interests, was unable to issue transmitting and receiving licenses with the same freedom as in pre war days.¹ This is the first appearance of the official policy confirmed in subsequent official documents of making broadcasting subservient to all other services of Wireless Telegraphy.

At the second conference of Affiliated Wireless Societies in March 1921 a request was made that Marconi's Wireless Telegraph Company should be allowed to transmit a weekly concert.² After six months consideration by the Post Office permission to broadcast music was refused but the members of 63 wireless societies, representing the majority of the experimenters in England, did not accept this refusal and petitioned the Postmaster General in 1921 with such effect that in February 1922 a license was granted to an experimental station at Writtle belonging to the Marconi Company which began transmissions of sound and music every Tuesday evening.

1. pages 261/2 Wireless World. 25.11.22.

2. pages 21/2 Wireless World. 3.4.22

Matters might have proceeded for some time on an experimental basis if it had not been for the birth and amazingly rapid growth of a new radio industry in the United States of America. On 7th March 1922 Mr. Hurd asked the Postmaster General in Parliament if he was aware that wireless receiving sets in the U.S.A. had increased in one year from 50,000 to 6,000,000 and that the entire country had been plotted into circuits with a central station so that every home might obtain at a cost below that of an ordinary gramophone weather forecasts and business information regarding prices and market conditions as well as records of sermons, lectures and entertainments, and whether he would endeavour to provide comparable facilities under the Post Office monopoly. Mr. Kellaway, the Postmaster General, replied that he was aware that there had been a considerable increase in the number of private wireless installations in the United States, but that he had no definite information as to the number of such installations or as regards the arrangements for providing the facilities described by the honourable member. He added in justification of the caution of the Post Office that he understood that the United States Government was considering the restriction of

the use of the wireless telephone for other purposes in consequence of the danger of interference with government and commercial communications.³

A number of British manufacturers of wireless apparatus applied to the Postmaster General for permission to establish similar services to those in the United States of America and the matter was referred to the Wireless Sub-Committee of the Imperial Communications Committee for consideration. It was recommended on 5th April 1922 by the Sub-Committee that broadcasting should be permitted subject to certain technical limitations.⁴ The Postmaster General, Mr. Kellaway, accepted these recommendations and on 4th May 1922 announced his intention of permitting the establishment of a certain number of broadcasting stations. He further stated that in order to give consideration to the demands of interested persons he had decided to call a conference which was duly held on 18th May 1922. Following upon that conference

3. Hansard, Vol. 151, H of C, Cols. 1078/9 ,

4. Excerpts from historical summary and resume of events leading to the formation of Sykes Committee presented by G.P.O. 20.4.23.

the leading manufacturing companies formed a committee under independent chairmanship with the task of organising the claims of those desiring to broadcast within the practical possibilities of the technical limitations decreed. At one time there was a risk of a division of the broadcasting interests into two main groups,⁵ but the impracticability of this arrangement and the influence of the Postmaster General, Mr. Kellaway, resulted in agreement to the formation of a single Broadcasting Company on 10th August 1922.⁶ The establishment of a single company marked the recognition of the principle that a monopoly would provide the most successful service particularly in view of the experience of mutual interference by competing stations in the United States. A further point of difference with practice in the United States was the decision that, while the service should be conducted without cost to the tax-payer it should not depend upon advertising for its revenue. The

5. Hansard, Vol. H of C, Cols 1956 4:5:22.

6. Memo 28.4.23 prepared by G.P.O. for Sykes Committee.

manufacturing companies were willing to subscribe the necessary capital in return for some measure of protection against foreign imported apparatus and this protection was promised for a period of two years. Dividends on the capital were limited to $7\frac{1}{2}\%$ and the income of the new companies was secured from royalties on the apparatus sold by member-manufacturers and one half of the proceeds from the issue of Broadcast Licences at a fee of not less than 10/-. The licences were to include a condition that the apparatus authorised for use must bear the BBC mark.

It was not until 15th December 1922 however, that the British Broadcasting Company was incorporated under the Companies Acts with the principal object of acquiring from the Postmaster General a licence for wireless broadcasting as a Public Utility Service. The company was constituted with a capital of £100,000 of which £60,000 was contributed in equal parts by the six leading wireless manufacturing companies all of whom were represented on the Board. The remaining capital was open to subscription by other wireless manufacturers and later wireless dealers also, who were represented by two additional Directors.⁷ An

7. Special Resolution by Company confirmed 24.10.23.

independent Chairman, Lord Gainford, a former President of the Board of Education and Postmaster General, was elected by the six original contributory companies. There followed later two appointments to the Board which deserve particular attention.

In October 1923 Mr. (now Lord) Reith was appointed from the position of General Manager to a seat on the Board as Managing Director. He earned the right to be described as the chief architect of broadcasting in the United Kingdom. The other appointment was that in December 1924 of the Rt. Hon. F.G. Kellaway, who succeeded Mr. Godfrey Isaacs on his resignation as the representative of Marconis. As Postmaster General Mr. Kellaway had played an important part in the delicate tasks of adjusting the interests involved in the formation of the Company.

A licence from the Postmaster General was granted in consideration for an undertaking by the Company to establish and operate daily a broadcast service from eight stations from 1st November 1922 until 1st January 1925.^x The actual terms of it, however, were not settled until 18th January 1923 (although the service began officially on 14th November 1922) chiefly because of the difficulties which arose over the supply of news

x Licence & Agreement dated 18.1.23 Cmd. 1822.

for broadcasting. It is necessary to examine in some detail this and other cases of difficulty arising from the self protective attitude of those with established interests which they felt to be threatened by the advent of broadcasting, as they had an important bearing on the progress of the Company and the future constitutional development of broadcasting.

Foremost amongst those with interests to protect were the newspaper proprietors and the news agencies, which were to a large extent owned by them. Through their representative bodies the Newspaper Proprietors Association and the Newspaper Society they secured restrictions in the license from the Postmaster General to the Company and an Agreement supplemental to it.⁸ The restriction in the license tied the Company to obtaining news and information in the nature of news from four named Agencies and any other Agency for the time being approved by the Postmaster General and was reinforced by the requirement that the Company should pay compensation up to a limited amount of £500 to the owner of any news exclusively published in any newspaper and broadcast by the Company in breach of this restriction. The action of those controlling

8. License & Agreement dated 18th January 1923.

the supply of news was probably dictated at least partly by the lack of legal protection for news, apart from the literary form in which it is clothed which is of course copyright. Their policy of self protection was carried by the Newspaper Proprietors into the sphere of publication and they decided that any announcements giving details of forthcoming broadcasts must be paid for by the Company after 18th February 1923 in the same way as commercially exploited places of entertainment such as theatres, music halls and public concert halls.^x This decision proved to be a mistake

x. The company refused to pay for the publications of its programmes in the daily press and the deadlock was solved in an unexpected way. Mr. Gordon Selfridge, junior, requested the supply of programmes two days in advance of performance which he distributed in the Selfridge Store. He also sent a copy to be reproduced in his Calisthenes column in the Pall Mall Gazette and the Gazette announced on its posters "Full B.B.C. programmes". The effect was immediate; the Gazette was unable to cope with the demand from the public and after one day of refusal the Newspaper Proprietors decided to accept the B.B.C. programme details as news.

and was rescinded. One of the results of it as soon as programmes were planned a sufficiently long time ahead was the birth on 29th September 1923 of the Radio Times owned by the Company and published in partnership with Messrs. Newnes Ltd. giving weekly programmes in advance and destined to become a great money maker for the Company and later for the Corporation.

The entertainment industry adopted a similar restrictive outlook and endeavoured to put an embargo on broadcasting by forbidding artists to take part in broadcast programmes. The industry was supported in this attitude by a number of leading artists who feared that broadcasting might distort their performances and so prejudice their reputations. This difficulty was overcome by a gradual process of education, technical improvement and the establishment of precedents such as the agreement of the British National Opera Company to permit broadcasting from Covent Garden and during provincial tours.⁹ But the initial opposition had shown the necessity for wide powers in future documents defining the scope and capacity of the broadcasting authority.

9. Broadcast over Britain by J.C.W.Reith

Apart from but connected with the entertainment industry there were the agents and societies concerned with performing rights and the gramophone record industry. They were nervous of injury or exploitation by reason of broadcasting as the Copyright Act 1911 drafted before the advent of broadcasting gave no clear guide to the new situation which had been created. It was not until 1927 that it was established judicially that the act of broadcasting was equivalent to the giving of a public performance within the meaning of the Copyright Act.^x

x. McCardie, J., in an obiter dictum in the case of *Messenger v B.B.C.*, 1927, 2 K.B. p.543 expressed the opinion that broadcasting was a public performance and this opinion was subsequently approved by the Court of Appeal in the case of *Hammonds Bradford Brewery Co. v Performing Right Society*, 1934 Ch. 121. The Copyright Amendment Act 1931 of Canada was the first to give a statutory definition of radio communication as a performance for the purposes of the Act.

On 17th May 1923 Sir Walter de Freece asked the Postmaster General whether in view of the protection granted to certain vested interests by the restriction of the issue of news by broadcasting to certain times of the day he would grant an equivalent protection for the copyright interests of authors and composers generally. To this the Postmaster General, Sir William Joynson-Hicks, replied by offering an opportunity for the Society of Authors, Playwrights and Composers to submit evidence to the Sykes Broadcasting Committee.¹⁰

The Gramophone record industry was apprehensive lest broadcasting should encourage the clandestine recording of artists' performances with resulting prejudice to the rights of artists and damage to the record business. This difficulty was met early on by the passing of the Dramatic and Musical Performers Protection Act 1925 which made it a criminal offence to make a record for commercial purposes of an artist without his previous permission in writing. As will be seen later some unexpected results have flowed from this

10. Hansard, Vol. 164, H of C. Cols. 690/1

piece of legislation which was promoted by the gramophone record industry Xbut it met the immediate difficulty.

This was the setting in which the new Company began to operate under its Memorandum and Articles and the License and Agreement with the Postmaster General. The peculiarity in these documents lies in the fact that while in the case of a normal company formed under the Companies Act it might have been expected that the operative powers of the Company would be wholly contained in the Memorandum with a licence from the Postmaster General limited to technical regulations this was not the plan followed in the case of the British Broadcasting Company. The operative capacity of the Company under its Memorandum and Articles was severely limited by the nature of the License and Agreement with the Postmaster General which extended to political and financial as well as technical matters, a peculiarity which continued even after the establishment of the British Broadcasting Corporation X. Chiefly the Gramophone Company Ltd.

by Royal Charter. As shown by the Licence and Agreement and Supplemental Agreement dated 18th January 1923 it was necessary for the Postmaster General to take an active part in order to secure a supply of news for the new broadcasting service.

It was also necessary in order to avoid the chaos which had occurred in the U.S.A. to exercise a careful control over the regulation of this new service and the Postmaster General was the Minister with the necessary statutory authority. A third reason and a vital one was the assistance required in raising the necessary revenue, and here again by virtue of his statutory powers the Postmaster General was the obvious authority for this purpose. It was only later when broadcasting had developed from "a toy, a fantasy and even a joke" ¹¹ to "a national service possessing a high and certainly unforeseen degree of educational and cultural importance" that the emphasis shifted to these aspects of the service.¹² In the early experimental days the powers of the Postmaster General were required to solve the immediate practical difficulties of operation.

11. Crawford Committee Report 1925, Cmd. 2599

12. Para.53 Ullswater Committee Report 1935, Cmd. 5091

From the technical point of view the Postmaster General was careful to safeguard the priority of all other established official users of the ether and telegraphic lines and he fixed standards for preserving efficiency in the operation of the transmitting stations without interfering with their general conduct and operation by the Company's engineers. He decreed that the eight broadcasting stations might be operated at any time on Sunday but only between 5 pm and 11 pm on weekdays and reserved power to take over the stations in the event of an emergency the existence of which he was the sole judge. No one was to be employed in working any of the stations who was not a British subject.

From the political point of view the overlordship of the Postmaster General was also complete. The principal object in the Memorandum of the Company was to operate (within the United Kingdom and within Ireland) a public utility service for "broadcasting" to the public the same variety of matters as were comprised within the description of "broadcast matter" in the License from the Postmaster General and within the description of news and general information contained in

the Agreement supplemental to the License. The Postmaster General reserved to himself the sole right of extending the scope of permissible broadcast matter. ^x A further two clauses in the License bound the Company not to alter its Memorandum and Articles without the consent of the Postmaster General and to wind-up voluntarily within one calendar month of ceasing to hold the License of the Postmaster General. Of great political importance as the new service of broadcasting developed was the clause obliging the Company to transmit communiques, weather reports or notices, if requested, by any department of His Majesty's Government.

x. License, Cmd. 1822; clause 1.

"Broadcast matter" was defined as meaning:- "concerts, lectures, educational matter, speeches, weather reports, theatrical entertainments and any other matter (including news and other information) from time to time approved by the Postmaster General".

There were both political and financial considerations in the restriction in the License against the Company receiving money or other valuable consideration from any person in respect of broadcasting, without the consent in writing of the Postmaster General, and from sending broadcast matter provided or paid for by any person other than the Company or the person actually sending the matter. The Company was, however, permitted to use for broadcast purposes without payment concerts and theatrical entertainments. Thus it was decided as a matter of policy not to make the service dependent upon revenue from advertising as in the U.S.A. and to look to other sources of revenue to finance the new service.

Direct profits from broadcasting were foregone from the outset; only a small starting capital was called for by the Company itself and the return on this capital was limited to $7\frac{1}{2}\%$. Commercial considerations were therefore reduced as much as possible consistent with the necessity of creating a large scale radio industry to provide the public with receiving apparatus and the Company with an income from royalties upon sets and parts made by members of the Company. This royalty

was payable according to a tariff approved by the Postmaster General who restricted the issue of a broadcast receiving licence to owners of sets and certain parts bearing the mark B.B.C.-Type approved by the Postmaster General. In addition to the royalties on sets and parts and half the fees from broadcast receiving licenses both of which were fixed at 10/- each there was added half the fees received in respect of experimental licenses. These items constituted the income of the Company.

This system of raising the necessary income for the service broke down rapidly owing to the marketing of foreign made parts upon which no royalties were paid and to the too liberal interpretation of the qualifications for an experimental license the issue of which was not tied to the use of any particular apparatus. By March 1923 no less than 35,385 experimental licenses were issued out of a total of 122,946 and it was estimated early in 1923 that there were 200,000 unlicensed listeners as well as many applicants for experimental licenses who were not bona fide experimenters. In January 1923 the Post Office agreed to limit the issue of experimental licenses only to persons of unquestionable

qualifications but it was powerless to control the more difficult situation created by the evasion of receiving licenses and the disregard of the conditions in them dealing with receiving apparatus. The manufacturers who were members of the British Broadcasting Company were extremely dissatisfied and in order to resolve the difficulty and to clear his own mind on the question whether it was in accordance with public policy for the Post Office to levy compulsory taxes for the benefit of broadcasting companies the then Postmaster General, Sir William Joynson-Hicks, appointed a Committee of 24th April 1923 under the Chairmanship of Major General Sir Frederick Sykes, M.P., from whom it took its name.¹³ The composition of this Committee is of interest as in addition to three Members of Parliament it contained representatives of the Post Office, the Press, the Services and the Radio Society of Great Britain and the General Manager of the B.B.C. Its terms of reference were to consider broadcasting in all its aspects and to

13. Hansard, Vol.162, H of C. Col. 2442

make recommendations for the future, following upon the determination of the current license of the Company at the end of 1924. The Committee duly presented a Report on 23rd August 1923 and its recommendations touched on the political, financial, operational and technical aspects of broadcasting.

The attention of the Committee was chiefly directed to matters of political, financial and operational importance but there were some technical recommendations of great importance. In order to reduce interference between existing stations and to assist the development of the service it was recommended that there should be a considerable extension of the existing broadcast band of wave lengths. More important still was the recognition of the right of broadcasting to a place in the ether evinced by the recommendation that all possible steps should be taken to protect the band allocated to broadcasting from interference by other services. It will be remembered that in the original license broadcasting was made subservient to all other established users of the ether. In further confirmation of the importance of broadcasting it was noted that the fighting services were prepared to agree to the complete withdrawal of the restriction on the

hours of broadcasting subject to a reservation of their overriding rights.

The obvious importance of the broadcasting service in the life of the nation impressed the Committee with the necessity of establishing the principle of public control but they did not extend that principle to the point of state operation which after careful consideration they specifically rejected. They visualised instead a service subject to control by a Minister responsible to Parliament and for this purpose the Postmaster General was considered the appropriate Minister on account of the statutory powers with which he was already invested in respect of broadcasting. The Committee rejected the principle of an unrestricted commercial monopoly equally with that of a state monopoly and were thus left with the task of defining what should be the authority. In this they revealed their uncertainty in regard to the future. They realised that many questions, delicate, complex and vital to the social life of the community, would require to be answered and they proposed to establish by statute an unpaid Broadcasting Board of thirteen members mostly representing particular interests to assist the Postmaster General.

The Committee had some inkling that in recommending the establishment of the Board they had not solved the constitutional difficulty and added that broadcasting might eventually become so great a national responsibility as to demand the creation of a small paid body of experts to whom control might be entrusted subject to the Postmaster General. One member of the Committee, Sir Henry Norman, was so certain that the proposed Broadcasting Board would be quite impracticable that he made a special reservation on the point. In his view broadcasting was destined to become so vital a part of the social life that its day to day control would require the whole-time work of a compact highly qualified and well paid Broadcast Control Board of three members. While not an accurate forecast of things to come this proposal showed an acute realisation of the tempo of a public service of broadcasting.

The general uncertainty of the Committee in regard to the future organisation of broadcasting was reflected in the cautious recommendation that while the operation of the existing service of the Company should be

continued for a definite period subject to modifications in the Company's licence, the Government should keep its hands free to grant additional licences and should consider various alternatives for the operation of a broadcasting service in the future by the Company or by other authorities.

It will be remembered that it was the failure of the financial arrangements settled by the first Licence and Agreement that precipitated the appointment of the Sykes Committee. The Committee, therefore, devoted a good deal of attention to the problem of securing an adequate revenue for the broadcasting service while overcoming the existing difficulties. It was recognised that the terms of the existing Agreement between the Postmaster General and the Company could only be modified with the assent of the latter and the Committee hoped that if the Company's proportion of the broadcast receiving licence fee of 10/- was increased from 5/- to 7/6d, subject to a sliding scale based on the number of licences issued, the Company would be willing to waive its protective rights in respect of foreign apparatus. The Company was unwilling, however, to part with these rights, although it was felt by the

Committee to be wrong in principle that the control of importation of foreign wireless apparatus should be attempted by means of licences issued by the Postmaster General. This was considered to be a fiscal measure and properly the function of the House of Commons.

The rift in outlook between the Company and the Committee on the matter of revenue, although the Company only claimed the rights secured to it in the Agreement dated 18th January 1923 with the Postmaster General, illustrated very well the difference in point of view between a service operated at least part in the interests of a particular industry and a service operated wholly in the national interest. The decision of the Committee to make the broadcasting service mostly dependent on the revenue from wireless receiving licenses and without cost to the tax-payer was of the greatest constitutional importance as it both established the principle that the broadcasting service should be self supporting and that it should not be tied to any particular commercial interest.

In their anxiety to avoid any part of the cost falling on the tax-payer the Committee examined the question of advertising as a source of revenue. They

decided that the maintenance of a high standard of broadcast programmes was incompatible with the broadcasting of advertisements but that there would be no objection to the Company accepting the gift of a concert and broadcasting the name of the donor or the name of a publisher and the price of the song broadcast. This recommendation appeared to distinguish between the broadcasting of advertisements as such and the system of sponsoring upon which broadcasting in the U.S.A. had suddenly flourished and it went considerably further than the limited permissions in the first Licence.

The Committee gave some attention to the established industries who at the inception of broadcasting felt that their enterprise was threatened. First and foremost came news and evidence was given by the Newspaper Society and Newspaper Proprietors Association and the principal Agencies. They claimed in justification of the retention of the ban on the broadcasting of news before 7 pm and the restriction on the obtaining of news to what the four principal Agencies supplied that it was wrong in principle for any telegraphic corporation to engage in the business of collecting news for distribution to the public and that it would not be in

the public interest for a broadcasting system which was a quasi monopoly to obtain news except from authoritative and responsible sources. The Committee, which contained representatives of the Press, while it formed the view that the public was well served by the Press in the matter of news, felt that there should be a gradual extension in the broadcasting of news under proper safeguards and that more latitude should be given for the broadcasting of special events without regard to the hour.^x

The entertainment industry did not offer evidence and the Society of Authors, Playwrights and Composers did not avail itself of the offer of the Postmaster General to give evidence and was content to inform the Committee that owners of copyright were fully protected by the law of copyright. The Gramophone Company Ltd. also drew attention to its legal rights and suggested on its own behalf and on behalf of artists that it should be made illegal to make or sell a gramophone record of a broadcast performance without the consent of the artist whose work was recorded. The Committee

x. Sykes Committee Report, para. 69, Cmd. 1951.

did not feel called upon to deal with these legal questions.

The Committee examined the delicate question of controversial broadcasting. Mention was made of the case of a broadcast speech about the building dispute of April 1923 following which a complaint was made in the House of Commons, and the Postmaster General conveyed to the Company his view of the undesirability of broadcasting speeches on controversial matters. The Committee felt ~~this~~ went too far and they suggested that while the Postmaster General must remain the final arbiter he should invoke the assistance of the proposed Broadcasting Board in deciding questions of controversial broadcasting. The Committee did not consider it desirable to maintain any system of censorship.¹⁴

In the supplementary Agreement between the Postmaster General and the Company dated 1st October 1923 ¹⁵ effect was given to the Committee's recommendations for greater technical facilities, the withdrawal of

14. Sykes Committee Report 1923, para. 70.

15. Cmd. 1976 of 1923

restrictions on the hours of broadcasting, an amplification of the existing power to broadcast "sponsored" material and an extension of the original licence to 31st December 1926.^x The Agreement also embodied the financial compromise which was negotiated after the Company's refusal to accept the recommendation of the Committee that the conditions for making of apparatus and the system of royalties should be abandoned. It was agreed that during the period up to 31st December 1924 two forms of licence should be issued; a broadcast licence at 10/- (of which the Company should receive 7/6d) covering the use of apparatus bearing the B.B.C. mark and a constructors licence at 15/- (of which the Company should receive 10/6d) covering the use of apparatus not bearing the B.B.C. mark. The royalties payable to the Company were to be reduced during that period and from 1st January 1925 a single

x. The permission to accept programmes "provided" by advertisers was exploited in a few instances during 1925 and then quietly waived. B.B.C. Handbook 1928 p.39

form of Broadcast Licence was to be issued at 10/-, of which the Company should receive 7/6d. As from that date, the royalty system and the conditions covering the marking of apparatus were to be discontinued. Such, however, was the growth in the number of Licences^X that, at the suggestion of the Company, the royalty system was abandoned, and the single uniform 10/- Licence was introduced on 1st July 1924. This was of the utmost constitutional importance as an undertaking, which was begun by private commercial enterprise and at least partly orientated to that end was now wholly dependent for its income on public funds.

The problem of consolidating the position that broadcasting had won in the life of the Nation, and securing its future development in the public interest called for an answer. The Sykes Committee had attempted that rather irresolutely with its recommendation for the setting up of a Broadcasting Board to assist the Postmaster General in the administration of broadcasting, and to advise him on

- X. They rose from 179,616 on 30th September 1923 to 821,303 on 30th June 1924.

major questions of Policy. This Board was actually constituted on the nomination of the Postmaster General with Sir Frederick Sykes as Chairman, and was intended to be representative of sectional interests which were involved in broadcasting. The Postmaster General himself did not regard it highly, and did not even invite its comments on the Report of the Crawford Committee. [The composition of the ^{Board} Committee was as follows:-

Major General Sir Fred. Sykes	(Chairman).
Lord Riddell	(Newspaper Interests).
Sir Francis Ogilvie	(Chairman, Geological Survey Board).
Mr. F.J. Brown	(Asst. Secretary of G.P.O.)
Mr. Fred. Bramley	(Trades Unions).
Mr. Guy Burney	(Wireless Trade).
Mr. Walter Payne	(Entertainment Interests).
Mr. A.A. Campbell-Swinton	(Radio Society of Great Britain).
Mr. J.C.W. Reith	(B.B.C.)
Secretary - F.W. Phillips of the G.P.O.	

In November 1924, Dr. Marion Phillips ^{was} appointed additional Member, and, in February 1925, Mr. Phillips was succeeded as Secretary by Mr. H.G.G. Welch.]

The first meeting was held at the General Post Office on 9th April 1924, and was followed by several others at which various questions of policy were discussed. The Committee did not meet at all in 1925, or in 1926 when it dissolved, as so few questions arose upon which the Postmaster General was anxious for its advice. It did not, therefore, prove a very effective instrument for shaping broadcasting policy.

The tempo of broadcasting required something different, and the standards of broadcasting were established by the Company itself under the leadership of its Chief Executive and Managing Director, Mr. J.C.W. Reith, who was permitted considerable liberty of action by his Board.

The public interest, and that of private enterprise could not always be depended upon to coincide in the future direction and development of broadcasting. In his Book "Broadcasting over Britain", published in 1924,

Mr. Reith made it clear that it had only been possible to maintain this coincidence by considerable sacrifices in sales programmes by the principal manufacturing companies who by adopting a different technical policy from that actually chosen could have made greater profits for themselves. These could not always be accepted.

It was clear that the Company could not go on beyond 31st December 1926, the extended date of the expiry of the Licence, and the Postmaster General appointed a new Committee in July 1925 under the Chairmanship of the Earl of Crawford "to advise as to the proper scope of the broadcasting service as to the management, control and finance thereof after the expiry of the existing Licence on 31st December 1926 and to indicate what changes in the law, if any, are desirable in the interests of the broadcasting service".

The Committee was much broader based than the Sykes Committee and was not intended to be representative of particular interests affected by broadcasting as was to some extent the case with the Sykes Committee. The interest of Parliament was however confirmed by the appointment of three Members of differing party

allegiance and another interesting appointment was that of Lord Blanesburgh, a Lord of Appeal in Ordinary. It presented its report on 2nd March 1926.

As a result of the important preliminary work of the Sykes Committee and the elimination of technical questions from the terms of reference it was able to concentrate on the political and financial aspects of broadcasting. From the political aspect the most important recommendation was that the broadcasting service must remain a monopoly which should be conducted by a public corporation acting as a trustee for the national interest with the status and duties appropriate to a public service. It was felt that this recommendation could only be achieved by the establishment of the Corporation as a new type of legal "persona" either by special Act of Parliament or under the Companies Acts, the distinguishing feature of the new Corporation being its freedom from commercial interests.

The Corporation was to be called the British Broadcasting Commission and it was to have a Board of not less than five or more than seven Commissioners. These Commissioners were to hold office for five years, were to be adequately paid for their services, and were to be

persons of judgment and independence, not representative of any particular section of the community. The appointment of the Commissioners was to be vested in the Crown, and in the exercise of their authority the Commissioners were to be granted the maximum freedom Parliament was willing to concede. The Commission was designed to be ultimately responsible to Parliament, but it was specifically recommended that, while the Postmaster General should be the Parliamentary spokesman on broad questions of policy, it was essential that the Commission should not be subject to the continuing Ministerial guidance and direction which applied to Government offices.^x The Commissioners were recommended to appoint Advisory Committees so as to ensure consideration for all phases of broadcasting. In order that there should be adequate time for planning and development, it was recommended that the License from the Postmaster General to the new Commission should be for a period of not less than ten years.

x. The actual word used in para.16 of the Crawford Report is Offices. Departments would be more correct.

In regard to particular matters, it was recommended that the Commissioners should be entitled to no privileges or preferences as regards the use of copyright material, whether in news or otherwise, and that the broadcasting of a moderate amount of controversial matter should be permitted on condition that the material was of high quality and distributed with scrupulous fairness.

As regards finance, it was recommended that the new Commission take over the entire property and undertaking of the British Broadcasting Company as a going concern on 1st January 1927 and that the Commission should be empowered to raise capital. It was considered advisable that the fee of 10/- for a receiving license should be stabilised and that the State should only be entitled to retain a part of the income accruing from these licenses after the Commissioners had received an adequate amount to enable them to ensure the full and efficient maintenance and development of the service. The accounts of the Commission were to be subject to the review of His Majesty's Comptroller and Auditor-General, and the recommendation was made that an Annual Report should be presented to Parliament by the Commissioners.

Generally speaking, the Crawford Committee's report confirmed the movement in the direction towards greater freedom from control in the operation of the broadcasting service. It will no doubt be observed that, while the Sykes Committee would have been content with an advisory Broadcasting Board consisting of a Chairman and twelve members representing special interests, assisted by the Post Office, the Crawford Committee recommended the establishment of a much more independent and workable executive organisation whose members were to be representative of the general interest and not specialists or experts. Further, while the Sykes Committee was content to recommend the occasional broadcasting of news events before 7 pm., the Crawford Committee desired that there should be no restriction of any kind on the broadcasting of news and advanced a positive plea for the broadcasting of controversial matter.

The importance of broadcasting as a national service was illustrated by the General Strike of May 1926. When most other forms of communication were almost at a standstill the Company carried on in addition to the normal activities an all day service of news and

general information. The Government made considerable use of the microphone with the object of restoring normal conditions but the Labour Party were not allowed to state their case and the Company which was most anxious to preserve its independence while performing a vital national service, based this attitude on the legal opinion that the action of the strikers was illegal⁺ expressed by Sir John Simon in the House of Commons. The Company therefore refrained from broadcasting anything which might be interpreted as sympathetic towards the strikers and carried this to the extent of withholding from the microphone for some hours a Manifesto by the leaders of the great church groups in the United Kingdom which was to have been broadcast by the Archbishop of Canterbury. The experience of the General Strike had a direct influence on the subsequent constitution of

⁺ Footnote. The decision of Astbury, J., in the case of National Sailors & Firemens Union of Great Britain and Ireland v Reid, 1926 Ch. 536. The authority of this case, which was on an issue relevant only to the particular circumstances, is somewhat doubtful.

broadcasting and was probably responsible for the limiting clause in the License by which the Postmaster General had the right by notice to veto the broadcasting of any broadcast matter.¹⁶ Apart from the internal influence great international interest was shown in the use of broadcasting in this crisis and the Communications and Transport Section of the League of Nations made special records of the broadcasts of the Company for study in relation to the question of the maintenance of communications during a crisis.

On 15th November 1926 the Postmaster General, Sir William Mitchell Thompson, in the course of a debate on the Crawford Committee's Report, invited the House of Commons to approve a variation of the proposal to set up a body by Statute or by incorporation under the Companies Acts, by petitioning that this body should be set up by the grant of a Royal Charter.¹⁷ The advantage of proceeding by Royal Charter was the flexibility of such a constitutional form and the emphasis it gave to the separation of broadcasting from political authorities. It also had the immediate

16. Hansard, Vol.198 H of C, Cols.445/50

17. Clause 4 (3) Licence from P.M.G.
C.M.D. 2756 of 1926.

advantage to the Postmaster General of avoiding a parliamentary discussion at the various stages of a Bill before it becomes law. The Postmaster General recognised the interest of Parliament by drawing attention to the draft of the Charter for which petition was to be made and to the draft Licence and Agreement which would be the subject of assent between the Governors Designate of the new Corporation and himself, if and when the Charter was signed. A copy of an agreement between the existing Company and the Postmaster General providing for the transfer of its assets was also tabled.

The Postmaster General having pointed out that in four years broadcasting had developed from a scientific joke into a power, not only nationally but internationally emphasised the need for careful regulation of broadcasting by the State.¹⁸ He also paid very high tribute to the standards which had been set and followed by the old Company.

18. Hansard, Vol.199 H of C. Col.1564

Attention was directed particularly to the Clauses of the Charter which deal with copyright, news and advisory committees because of the criticism those points had evoked. As regards copyright, it was pointed out that the power to acquire copyright had always been enjoyed by the Company and there did not appear to be any reason why it should be withheld from the proposed Corporation. Similarly in answer to the objection raised to the Corporation being given power to collect news by any means or from any sources which it might find necessary it was stated that the great service of broadcasting could not be permanently held down to any hard and fast restriction and in the last resort the Postmaster General felt obliged to defend the possession by broadcasters of the most full and ample powers - not in a position of privilege but in one of equality. In the view of the Postmaster General the point in the Charter most stressed by the Crawford Committee was that the Corporation should be equipped with powers to appoint Advisory Committees and Sub-Committees. In the powers of these Committees the Postmaster General considered that the answer lay

to some of the complaints that education, the entertainment industry, music, literature and science were not sufficiently represented on the proposed governing Board.

The Postmaster General read the text of a letter addressed to him by the Governors Designate of the proposed Corporation in which great anxiety was expressed as to whether the funds at the disposal of the Corporation would be sufficient for the proper development of the Corporation and in the debate which followed further uneasiness was shown concerning the financial provisions in the proposed license. Appeals were also made in the course of the debate for the removal of the existing restriction on the broadcasting of topics of political, religious or industrial controversy which the Postmaster General indicated he intended to maintain by the exercise of his powers under Clause 4(3) of the license. There was no objection raised, however, to the decision of the Postmaster General to prohibit the Corporation from expressing their own views on public policy.

The new Charter was dated 20th December 1926 and

the License from the Postmaster General 1st January 1927. By these documents the Corporation was established for ten years from 1st January 1927.

CHAPTER TWO.THE CORPORATION AND THE STATE.

The formula defining the duty of the Corporation, Governors, Director General. Ministerial control, including right of veto. Parliamentary Control. Editorial rights. Advisory Committees.

In this Chapter, the relationship between the Corporation and the State is considered. This involves an examination of the guiding rule of conduct ordained for the Corporation's service, and how far it has been possible to follow this rule in the social development of the Service at the principal points of contact with other organs of the State and with listeners generally. First of all, the Keynote and Formula defining the duty of the Corporation are described, and then how this duty has been fulfilled by the method of appointing the Governors and Director General; how far this duty has been possible in the face of Ministerial and Parliamentary powers; and, finally, the capacity of the Corporation to sustain its role in such matters as Editorial freedom and in its consultations with other Bodies representative of the interests of listeners.

THE KEYNOTE and FORMULA defining the duty of
the CORPORATION.

The Keynote to the Service is to be found in the Preamble to the Charter. There, it was stated, in terms, that the widespread interest of listeners and the great value of the broadcasting service as a means of education and entertainment justified its being developed and exploited to the best advantage, and in the National interest.

The Formula defining the Corporation's duties is to be found in the Objects Clause (3)¹ of the Charter where it was stated that the Corporation should carry on a Broadcasting Service for Great Britain and Ireland (but not including the Irish Free State) the Channel Islands and the Isle of Man, as a Public Utility Service. In the new Charter for the continuance of the British Broadcasting Corporation after the first ten year period, there were certain significant amplifications. The importance of the News Service was recognised by adding the word "information" to the words "education and entertainment" which constituted the earlier Keynote. The Formula in the Objects Clause (3)² was expanded so that the Corporation was required to carry on a Broadcasting Service as a Public Utility Service for

1. C.M.D. 2756 of 1926.
2. C.M.D. 5329 of 1936.

broadcasting by means of wireless, telephony and television, and constitutional recognition was given to the new Empire Service which originated as a result of the initiative of the Corporation itself, by the requirement that the Broadcasting Service should be developed and exploited for the benefit of the Dominions beyond the seas and territories under the protection of the Crown.

THE GOVERNORS of the CORPORATION.

The first Members of the Corporation were designated by name in the Charter of 1st January 1927, and they were also declared to be the Governors. They were five in number, but power was reserved to the Crown to increase their number. In constitutional practice, this meant that Governors were appointed on the recommendation of a Minister of the Crown, with the influence of the Crown as the only bar to any lack of equity in the balance of these recommendations. The Governors were paid at the rate of £3,000 per annum for the Chairman, £1,000 per annum for the Vice Chairman and £700 for each of the remaining three Governors, and they were entitled to hold office for a period not exceeding five years. They were, however, eligible for re-election.

¹ Following the recommendation of the Crawford Committee,

1. Taken from Minute by Postmaster General,
Sir Kingsley Wood.

the Governors of the Corporation act primarily as Trustees to safeguard the Broadcasting Service in the National interest. Their functions are not executive, their responsibilities are general and not particular, and they are not divided up for purposes of departmental supervision. They are not appointed as experts or specialists in any of the activities covered by the Broadcasting Service, but are intended, as far as possible, to be persons of wide outlook and considerable experience of men and affairs, preferably with previous public service of one kind or another, and including in their number men with financial and commercial experience. They are, subject to the responsibilities and duties laid by Parliament and the Charter upon the P.M.G., responsible for seeing that the many purposes for which broadcasting was established and which were adumbrated in the Charter are carried out.

They discuss major matters of policy and finance with the Director General and other Officers of the Corporation, but they do not touch the actual execution of that policy and the general administration of the service in all its detail. They are ultimately responsible within the scope of the Corporation's independence for the conduct of the

broadcasting service.

The position of the Governors was examined by the Ullswater Committee¹ which re-affirmed the recommendation of the Crawford Committee² that the broadcasting service should be conducted by a public Corporation "acting as Trustee for the National interest" and approved the constitutional position that the Governors had come to occupy. They also re-affirmed the principle that the Governors should not be specialists or representatives of particular interests or factions, and expressed the view that the outlook of the younger generation should be reflected in some of the appointments made.

They recommended that the number of Governors should be increased to seven, that they should be nominated by the Crown on the recommendation of the Prime Minister (an approval of existing practice) that the normal term of office should be five years, and that a Retiring Governor should not be eligible for re-election; that the salary of the Chairman should remain at £3,000, and that of each other Member of the Corporation should be raised to £1,000.

The Governors of the Corporation in their Observations on the Report of the Ullswater Committee, and published

1. C.M.D. 5091 of 1936.
2. C.M.D. 2599 of 1926.

contemporaneously with it, remarked that, although under the existing Charter¹ it was possible to appoint seven Governors, the limit/^{ation}to five was considered and endorsed in 1933 by the Prime Minister and Postmaster General of the day in consultation with Mr. J.H. Whitley, the Chairman. They were unable to see any need for, or advantage in, the increase since the principle of specialist Governors had been rejected by the Committee. They offered the opinion, in the light of their experience, that collective wisdom did not grow with numbers, and that a small Board was generally more efficient than a large one. They felt sure that it was possible for a Board of only five Governors to secure that variety and width of outlook to which the Committee justly attached importance.

In spite of these enlightening remarks, the Government in the White Paper of June 1936¹ accepted the recommendation that the number of Governors should be increased to seven. They also decided to increase the salaries of Governors from £700 to £1,000.

The new Charter gave effect to these decisions, and fixed a maximum of five years as the term of office, with a right vested in the Postmaster General to recommend to the

1. C.M.D. 52077 of 1936.

Crown on the ground of public interest that a Retiring Governor should be re-appointed, otherwise Governors were not eligible for re-appointment. The number of Governors was fixed at seven, subject to adjustment up or down at the will of the King in Council. A new disqualification for a Governor apart from the conventional ones was introduced by the Clause by which a Governor should cease to hold office "if he holds any office or place of profit in which his interests may, in the opinion of the Postmaster General, conflict with the interests of the Corporation."

That was the position up to the outbreak of war when the number of Governors was reduced by Order in Council, dated 5th September 1939, to two, namely the Chairman and Vice Chairman, with the object of facilitating rapid decision on the part of the Corporation. The Lord Privy Seal, Sir Samuel Hoare, stated in the House of Commons that the reduction was made at the suggestion of the Board of the Corporation itself in order to avoid delays, and followed the same lines as decision taken by Public Authorities, such as London County Council, to delegate their authority to a small Executive Committee¹. In a Letter published in the 'Times' on 23rd October 1939, Mr.

1. H. of C. Vol. 352. Col. 394.

H.A.L. Fisher, on his own behalf and on behalf of the other Governors who had been suppressed, did not agree with Sir Samuel Hoare's version of the matter. He said that the truth was that, without consultation, an Order in Council was prepared eliminating Governors altogether in the event of war. It was only as a result of energetic protest from the Governors that the present arrangement was arrived at between the Board and the Ministry of Information, and it was only accepted as a temporary war-time measure. This position continued until 2nd April 1941 when, as a result of strong criticism in Parliament of a policy decision of the Corporation in its domestic affairs, three additional¹ Governors were appointed of different political outlooks, of whom one had formerly held office^X. Another Governor, Sir Ian Fraser, was appointed on 23rd April 1941 who had also formerly held office and who had resigned from Parliament in order to do so because a Governorship of the Corporation was quite clearly "an office of profit held under the Crown" within Section 25 of the Succession to the Crown Act 1707, which provides that persons who hold such offices are not capable of sitting in Parliament. This time, however, Sir Ian Fraser received a Dispensation under

the House of Commons (Temporary Provisions) Act to retain his Seat in the House of Commons. Later, on 23rd July 1941, a seventh Governor, the Hon. Harold Nicolson, was appointed who also was a Member of Parliament and who also obtained a Dispensation. The effect of these last two appointments was, of course, to strengthen the representation of the Corporation in Parliament where an interest in its day to day affairs continued to grow.

In fact, in the course of a Parliamentary Debate, Sir Ian Fraser propounded the theory that the Governors exercised trusteeship on behalf of the House of Commons notwithstanding the taking over by the Government of responsibility for what was said to foreign and occupied countries. This theory the Minister of Information (Mr. Brendan Bracken) was by no means ready to accept¹.

The difficulty arising from a Governorship being an office of profit arose in connection with the General Election of July 1945 when Lady Violet Bonham-Carter, who was a Candidate, resigned her Governorship of the Corporation under Section 25 of the Succession to the Crown Act, 1707 quoted above, as she would otherwise have been inelegible for election. Lady Bonham-Carter failed to



1. H. of C. Vol. 377. Cols. 1698 & 1754.

secure election, but on 5th September 1945, she was re-appointed as a Governor.

Both the Chairman¹ and Vice Chairman² of the Corporation, whose terms of office expired before the date of the expiry of the Charter, were re-appointed for the term of the Charter in order to secure continuity of policy.

On April 4th 1945, the appointment of five new Governors was announced in replacement at varying dates of all the existing Governors except the Chairman and Vice Chairman. In the announcement, it was stated that the appointments were not necessarily confined to the period of the existing Charter which expired on December 31st 1946. Should the new Charter provide for not less than seven Governors, the Government intended to re-submit these names to the King if those concerned were willing to continue to serve for such terms as might be provided. The most interesting things about these appointments were that they did not include the names of any Members of Parliament, and one of the two women appointed was Miss Barbara Ward, a broadcaster of experience, only Thirty one years of age.

In the White Paper of July 1946³, the Government

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| 1. | H. | of C. | Vol. | 399. | Col. | 625. |
| 2 | " | Vol. | 380. | Col. | 1518. | |
| | 3. | C.M.D. | 6852 | of | 1946. | |

devoted some attention to the Governors. They expressed the intention of ensuring that the Governors of the Corporation were as representative as possible of the public which they served and that the Corporation should be controlled by the best possible talent. It was emphasised that the Director General and Staff of the Corporation were responsible to the Governors, and that it was the duty of the Governors to take an active interest, not only in the programmes, but also in the financial and staff policy of the Corporation. The existing salaries of the Chairman and Vice Chairman were to be maintained at £3,000 and £1,000 per annum respectively, but, in respect of the other members of the Board, it was proposed that from the date of the renewal of the Charter, their salaries should be reduced to £600 per annum which was, of course, £100 less than the original Governors appointed in 1926. In the subsequent Debate, on 16th July, the Lord President of the Council, Mr. Herbert Morrison, re-enforced the observations in the White Paper. "It is important" he said "that the Governors should not under-estimate their authority over the Director General and staff of the Corporation who are wholly responsible to them for their actions"¹. Mr. Brendan Bracken

1. H. of C. Vol. 425. Col. 177.

also spoke on the functions of the Governors. He said that the Prime Minister should always search for the best Governors, and that one of the prime qualifications of a Governor was that he should be a stout resister of Governmental and other pressures.¹

It is interesting to compare these statements with the description of the functioning of the Board of Governors given by one of the retiring Governors, Mr. Arthur Mann, in an Article on "The Future of the B.B.C." in the 'Observer' of May 19th 1946 in which he wrote:- "It is widely supposed "that final control over policy rests with the Board of Governors, and so on paper it does. But the Members of the Board have generally been men and women with many outside interests and activities; moreover, for some years it has been the custom for the Board to meet only once a fortnight. These two facts are alone sufficient to show that the Governors cannot have much say either in the day to day work of administration or in the planning of programmes. These tasks devolve instead upon the permanent staff of the Corporation, at the head of which stands the Director General."

1. H. of C. Vol. 425. Col. 1111.

THE DIRECTOR GENERAL.

In the First Charter of the Corporation, it was stated in Clause 6(VII) that the Chief Executive Officer of the Corporation should be called the Director General, and specifically named John Charles Walsham Reith for the office. He had previously held office first as General Manager and, latterly, as Managing Director of the British Broadcasting ^{Company} Corporation, and before that time was an engineer. The first appointment of a Director General to the new Corporation was, therefore, by the King in Council and not by the Governors, and this was probably intended as a compliment to Mr. Reith as he then was. The precedent was not followed in the appointment of subsequent Directors General¹. They were appointed by the Board of Governors under Clause 7² of the Charter which gave them specific powers over the appointment of all officers, including any Director General appointed in succession to the first Director General.

The outbreak of the war and the transfer of powers from the Postmaster General to the Minister of Information, in accordance with the Agreement between the Postmaster General and the Corporation dated 3rd August 1938³ and the Notice

1. The next succeeding Director General was Mr. F.W. Ogilvie, Principal & Vice Chancellor of Queen's University, Belfast.

2. C.M.D. 5329 of 1936.

3. C.M.D. 6177 of 1940.

from the Postmaster General to the Corporation dated 5th September 1938, had an effect on the position of the Director General. The position of the Minister, as discussed in another Section, became one of increasing influence over the direction of the Corporation in matters pertaining to the war effort, and more particularly in relation to the services of the Corporation directed to the enemy and enemy occupied countries in Europe. On 6th February 1941, Mr. Duff Cooper, the Minister of Information, announced in Parliament that it had been decided to appoint from the Government two Advisers to the Corporation, one of whom was to be an adviser on general topics and home policy, and the other on foreign policy¹. To the first post, Mr. A.P. Ryan, Controller of the Home Division of the Corporation, was appointed, and to the second Mr. Ivone Kirkpatrick of the Foreign Office. Both Advisers became Members of the Staff of the Ministry of Information, and their function was to give advice to the Corporation on any political matters. Mr. Duff Cooper explained the reason for these appointments by saying that while the British Broadcasting Corporation had always met every request affecting policy when he had

1. H. of C. Vol. 368. Col. 1184.

made the wishes of the Government plain, there had not been the complete liaison which was desirable between Government advice and the independent conduct of the Corporation. The appointment of these Advisers not only led to a diminution of the independence of the Corporation but led inevitably to some curtailment of the executive powers of the Director General. The absorption of the Advisers, although Officials of the Ministry of Information, into the executive machinery of the Corporation developed so that, on 9th October 1941, the Corporation put out an official statement that "Following the setting up of the Political Warfare Executive, the Board of Governors of the Corporation in consultation with the Minister of Information and in agreement with him, have reconsidered the organisation of the Overseas Services. Mr. I. Kirkpatrick, the Government's Adviser on Foreign Policy at the B.B.C. has been appointed Controller of the Section of the Overseas Division dealing with enemy and enemy occupied countries. Mr. A.P. Ryan, a Controller on the B.B.C. Staff, at present seconded to the Ministry of Information, will return as Controller for the co-ordination of News Services in English, and will also be B.B.C. Adviser on home policy affecting programmes." By

this means, the Advisers became nominally at any rate subordinates of the Director General as Controllers on his staff. But the business of appointing Advisers was not finished, only next time the appointment came from the Board of Governors and not the Ministry of Information, although it was deeply interested.¹

On 1st November 1941, the Corporation announced that "in view of the extensive development of the organisation, the Board of Governors has invited Mr. Robert Foot, General Manager of the Gas, Light & Coke Company, to join the Corporation as General Adviser on the wartime organisation. The Governors and Directors of the Company have, in the national interest and as a wartime measure, agreed to lend Mr. Foot's services." The appointment was, therefore, temporary, but the nature of the appointment and the importance of the post previously held by Mr. Foot made it difficult to foresee his being subordinated to the Director General. At any rate, the result of his appointment was not long in appearing, as on 27th January 1942, the Corporation announced that "to facilitate re-organisation of the Corporation which the Board of Governors has undertaken to meet existing conditions, the Director General, Mr. F.W.

1. A remark of Mr. Cyril Radcliffe, K.C., the Deputy Director General of the Ministry of Information recorded in the Daily Mail of 1st November 1941. "An experienced business man was to take charge of the B.B.C. wartime organisation."

Ogilvie, has placed his resignation in the hands of the Governors, and they have accepted it." At the same time, the appointment of Mr. Robert Foot and Sir Cecil Graves, as Joint Directors General, was promulgated. Sir Cecil Graves had previously occupied the post of Deputy Director General, and was an old and experienced Member of the Staff. Considerable interest in these changes was shown in Parliament where the questions revealed a suspicion that Mr. Ogilvie's resignation was possibly the result of intervention by the Government. Mr. Evelyn Walkden asked the Minister of Information whether he could make any statement¹ on the resignation of Mr. Ogilvie, Director General of the B.B.C., whether he was consulted before the Governors decided to appoint two Directors General in his place, and whether the changes would involve any extension of the present Government control of the programmes and other activities of the B.B.C. In reply, the Minister of Information, Mr. Brendan Bracken, said that he was informed beforehand that the joint appointment would be considered. He felt, however, that the matter was one the Corporation should decide for themselves, and upon which he could offer no advice on behalf of the Government. Relations between the

1. Hansard Vol. 377. H. of C. Col. 1163.

Ministry and the Corporation were in no way affected by the change. The next change came with the resignation on 25th June 1943 of Sir Cecil Graves on grounds of health, and Mr. Robert Foot was left for nearly three months as sole Director General, but without official confirmation of that position. On 2nd September 1943, Mr. Foot was appointed sole Director General and Chief Executive Officer of the Corporation, and at the same time the appointment was announced of Mr. W.J. Haley, until then Managing Director of the Manchester Guardian and Editor of the Manchester Evening News, as Editor in Chief. One peculiarity in the official announcement was the sentence that "subject to the Board of Governors, the Director General and the Editor in Chief will be jointly concerned with the character and quality of the whole of the B.B.C.'s output." This mention of the Editor in Chief tended to suggest that he had a share in the responsibility for the output side, and, to that extent, the responsibility of the Director General was in commission. In this connection, it has to be borne in mind that Mr. Foot was first appointed as a business adviser on account of his special experience in business, and the qualities required for a business adviser might very well not include the cultural qualities and political experience ideally necessary in the

Director General of the Corporation. It was made evident that business interests were still the chief interest to Mr. Foot by his resignation on 1st April 1944 in order to become the first full time independent Chairman of the Mining Association of Great Britain, and Mr. W.J. Haley, the Editor in Chief, was appointed Director General. The post of Editor in Chief was abolished.

In the Debate on the White Paper on 16th July 1946, the Lord President, Mr. Herbert Morrison, referred to a theory that the set-up of the British Broadcasting Corporation provided that the Director General ran the undertaking, and that the Governors acted as a kind of consultative body. He condemned this as a wrong doctrine.¹ Mr. Bracken, in case these remarks should be interpreted as a possible criticism of the existing Director General, Sir William Haley, as he had become, went out of his way to describe him as "a man of great wisdom and tolerance, and full of courage, who, he thought, was the best possible choice for one of the highest offices in the country."² Some light on the origin of Mr. Herbert Morrison's remarks is given in Mr. Arthur Mann's Article in the 'Observer' of May 19th 1946. In that Article, he said in regard to the Director

1. H. of C. Vol. 425. Cols. 1081-1082.

2. H. of C. Vol. 425. Cols. 1109-1110.

General that he was the only man whose functions covered the whole field of broadcasting. In exercising over-all supervision over programmes and policy, he was assisted by the Senior Controller, but all the remaining members of the staff were engaged in departmental duties, and prevented thereby from viewing the work of the Corporation as a whole. In Mr. Mann's opinion, such concentration of power in a single head must inevitably produce unsatisfactory results.

MINISTERIAL CONTROL including RIGHT OF VETO.

The status of the Corporation as an independent institution is vitally affected by the degree of Ministerial control to which it is subjected. The Corporation stands in an unusual relation to the Government of the country in that, while it has been set up by the State, it is different in nature from a Department of Government transacting the State business. In accordance with the Charter/Licence under which it was established, following closely the precedent of the Company, the Corporation is liable to Ministerial control, both positive and negative, and yet it has enjoyed, in practice, a high degree of independence. In order to understand this paradox, it is necessary to

refer to the recommendation of the Crawford Committee "that the prestige and status of the Commission should be fairly acknowledged, and their sense of responsibility emphasised; that although Parliament must retain the right of ultimate control and the Postmaster General must be the Parliamentary spokesman on broad questions of policy, the Commissioners should be invested with the maximum of freedom which Parliament is prepared to concede."

These principles were put into effect in the first Charter and Licence¹ which gave the Postmaster General the right to exercise a controlling influence in matters political, financial, and technical although, in practice, these powers, generally speaking, remained in abeyance.

Under Sections 3 (a) and 18 of the Charter, the Corporation was bound to observe the Provisions of the Licence granted by the Postmaster General, and any instructions issued by him from time to time. Under Section 4 (2) of the Licence, the Corporation was bound to broadcast any matter (interpreted in practice as any official announcements) which any Government Department might require. Under Sub-Section (3) of the same Section, the Corporation was required to refrain from broadcasting any matter (either

1. C.M.D. 2756 of 1924.

particular or general) which the Postmaster General might specify. In neither Sub-Sections (2) nor (3) was any power given to the Corporation to make public the fact that the Government had exercised the powers reserved.

It may be remarked, at this point, that the only case in which the Postmaster General has exercised his veto was in informing the Corporation, on 11th January 1927, that he required the Corporation to refrain from broadcasting the following matters:- (1) Statements expressing the opinion of the Corporation on matters of public policy, that is, the expression of the views of the Corporation itself: (2) Speeches or Lectures containing statements on topics of political, religious, or industrial controversy.

As a result of representations in Parliament and the Press in favour of the withdrawal of the bar on controversial broadcasting, the Government, in March 1928,¹ withdrew the prohibition so far as controversial broadcasting was concerned. Prohibition on editorial comment by the Corporation remained, and still exists to the present day, and was extended in 1937 when a new Charter and Licence were granted to the Governors of the Corporation.

In the case of national emergency, Section 19 of the

Licence gave the Postmaster General power to take control of the broadcasting service on behalf of the Government for the duration of the emergency, of which the Postmaster General was the sole judge, and, under Section 20 of the Licence, the Postmaster General had power to take over the service in the event of the Corporation failing to observe the conditions in the Charter or Licence.

In matters of finance and technical development, the Corporation was restricted in its freedom and dependent on the Postmaster General. The bulk of the Corporation's revenue was received from the Postmaster General on the scale of payment laid down in the Licence, and if this scale of payment, which was based on the number of paid Wireless Receiving Licences, was inadequate, it was necessary for the Corporation to apply to the Postmaster General for an increase in the amount payable.

Technical control of wireless communications in the United Kingdom is vested in the Postmaster General by the Wireless Telegraphy Act 1904. In virtue of the powers of the Postmaster General under that Act, the Corporation was permitted, by Section 2 in the Licence, to establish wireless telephone stations at places approved by the Postmaster

General, and it was ordained in Section 4 (i) of the Licence that these stations should be operated on every day during hours prescribed by the Postmaster General. The broadcasts of the Corporation were also made subservient not only to wireless transmissions by the fighting services during manoeuvres and emergencies, but also to routine wireless transmissions by them or other Government Services.

These, then, were the principal limitations on the freedom of the Corporation, and might, at first glance, lead one to suppose that little real liberty of action was reserved to the Corporation. But, in accordance with what has been established English constitutional practice, the rigour of the texts under which the Corporation operated was softened by "conventions" in the legal and Parliamentary sense of the word. Thus, on 15th November 1926, the Postmaster General (Sir William Mitchell-Thomson, now Lord Selsdon) said:- "While I am prepared to take the responsibility for broad issues of policy, on minor issues and measures of domestic policy and matters of day to day control, I want to leave things to the free judgment of the Corporation."¹

This policy was re-affirmed on 22nd February 1933 when

the House of Commons resolved, after debate:-

"That this House, being satisfied that the British
 "Broadcasting Corporation maintains, in general, a
 "high standard of service, is of opinion that it would
 "be contrary to the public interest to subject the
 "Corporation to any control by Government or by
 "Parliament other than the control already provided for
 "in the Charter and the Licence of the Corporation;
 "that controversial matter is rightly not excluded
 "from broadcast programmes, but that the Governors
 "should ensure the effective expression of all import-
 "ant opinion relating thereto; and that only by the
 "exercise of the greatest care in the selection of
 "speakers and subjects can the function of the Corpor-
 "ation be fulfilled, and the high quality of British
 "Broadcasting Service be maintained." 1.

The position of the Corporation was thus one of independ-
 :ence in the day to day management of its business, and of
 ultimate control by the Government of the day.

The Corporation was satisfied with this status, but
 not with the means by which it was secured in the existing
 Charter and Licence. The Corporation felt it to be
 anomalous that there should be no clear differentiation
 between the functions of the Charter and the Licence.

When the Ullswater Committee was appointed, they submitted
 that the former should deal comprehensively with matters
 pertaining to direction and policy, and the latter with
 matters which the Postmaster General was bound to control
 by virtue of his powers under the Wireless Telegraphy Acts -

such as the regulation of wireless traffic and the collection of revenue. The Corporation regarded the differentiation between the Charter and Licence as a cardinal matter of principle which should be emphasised by arrangements under which the Lord President of the Council would assume Ministerial responsibility for all matters pertaining to direction and policy arising under the Charter while the Postmaster General would continue to be responsible for questions arising out of his powers under the Wireless Telegraphy Acts. It was pointed out that the Lord President was usually an "elder Statesman", invariably of Cabinet rank, and occupying a central position of a quasi-judicial kind with no departmental responsibilities. His authority also extended throughout the Empire, more significantly than ever since the Statute of Westminster 1931, and he already exercised analogous supervisory powers in the cultural sphere.

The Corporation considered that the Government should be empowered to exercise control over matter broadcast through the Lord President of the Council so that any general or specific instructions to broadcast, or to refrain from broadcasting, should be given by him and

should be publishable by the Corporation. In an emergency, the Lord President should have the right to direct in what manner the service should be carried on. In the last resort, he should have power to advise the revocation of the Charter if the conditions were not observed, or the Corporation failed to carry out its responsibilities.

In support of its plea, the Corporation emphasised the importance of avoiding the assumption, which was common both at home and abroad, that the Corporation was an organ or agency of the Government. In its evidence before the Ullswater Committee, the Corporation was supported by its own General Advisory Council and Sir Warren Fisher, the then Head of the Treasury, but the Post Office stood for the maintenance of the status quo.¹

The Ullswater Committee approved the broad constitutional position of the Corporation as the National Broadcasting Authority, but reached the conclusion that, while technical control under the Wireless Telegraph Acts (including the administration of the Wireless Licence system, the collection of revenue, and the investigation of complaints of electrical interference) should remain with the Postmaster General, responsibility for the cultural side

1. The Minutes of Evidence before Ullswater Committee.

of broadcasting should be transferred to a Cabinet Minister in the House of Commons, preferably a Senior Member of the Government, and free from heavy Departmental responsibilities. The Committee did not specify any individual office, and offered the opinion that it should rest with the Prime Minister to select a suitable Minister for the purpose. The powers of veto over programmes which rest with the Postmaster General would, as a natural consequence, be transferred to the Minister selected.

The Committee also recommended that the Corporation should have a discretionary power to announce the fact that any given notice was broadcast at the request of a Government Department but omitted any reference to the more important matter of giving the Corporation a discretionary power to announce the fact if the right of veto was ever exercised.

Another facet of Ministerial control examined by the Committee was the mechanism for taking over the broadcasting service during an emergency. It was felt that the right of direct Government control should be maintained in case of major national emergency, but a careful distinction was drawn between the procedure during a major and minor emergency. In the latter case, it was considered that it might be

sufficient that the Government should instruct the Corporation to broadcast specific messages while normal powers of discretion and decision in all other respects should remain unimpaired in the hands of the Corporation. It was also recommended that, where full Governmental control was imposed, this should be announced immediately and the action taken reported to Parliament. Mr. Attlee, in a reservation on this point, distinguished not between a major and a minor emergency but an emergency of State and an emergency of the Government as representing the Political Party in power. He felt that the independence of the British Broadcasting Corporation should be strengthened to the point at which it could resist any attempt to make it the instrument of one side in a national controversy, having in mind the experience during the General Strike.

The published Observations of the Governors of the Corporation viewed these recommendations rather unfavourably. They felt that it was not clear whether or not the Ministerial office to which the policy and cultural aspects of broadcasting should be transferred would be liable to change with successive Governments. For reasons of administrative continuity and to keep the Corporation

divorced from politics, the hope was expressed that the responsibility would be attached by the Charter permanently to some one stated office.

The Governors also expressed their disappointment that the recommendation that the Corporation should have a discretionary power to announce that any given notice was broadcast at the request of a Government Department (which merely confirmed existing routine) was not extended to include the far more important point of Ministerial instructions regarding the vetoing of an item.

The Government took the view that, if a Minister "free from heavy Departmental responsibilities" was specially appointed to be "responsible in respect of broad questions of policy and culture" he would find himself more and more obliged to exercise actual control, and the independent management by the Corporation might be impaired. Moreover, they felt that, as technical control under the Wireless Telegraphy Acts would in any case remain with the Postmaster General, the course recommended by the Ullswater Committee would have the further practical disadvantage of a division of broadcasting questions between two Ministers.

In the Debate on the new Charter of 17th December 1936, the Postmaster General touched on the delicate subject of the

veto, and made plain that the Government had decided that there might be circumstances in which it would be necessary for them to stop a broadcast, and not to say that it was being stopped. He gave two illustrations in support of this decision, but neither of them were very convincing except as justifying a temporary silence on the part of the Corporation.¹

In the new Charter and Licence of the Corporation, which became operative on 1st January 1937², little change was made in the state of Ministerial control over the Corporation. There were some increases in the restrictions on the independence of the Corporation, and these were, to some slight extent, counter-balanced by enlargements in the Corporation's favour.

From the standpoint of restriction, it was to be noted that, in two new sections of the Objects Clause of the Charter, Section 3 (f) and (h), it was only permitted to the Corporation to organise public concerts and to acquire an interest in, or company with, a business bearing some relation to the work of the Corporation with the approval of the Postmaster General. In the old Charter, the specific approval of the Postmaster General was not required for the

1. H. of C. Vol. 318. Cols. 2727-2780.
2. C.M.D. 5329 of 1936.

exercise of any of the particular capacities detailed in the Objects Clause.

In Section 4 (1) of the new Licence, the formal powers of the Postmaster General to prescribe in writing the hours during which programmes should be broadcast were intended to include the Empire as well as the Home Service, and in Section 5, the Postmaster General reserved to himself fairly complete powers in regard to Television inasmuch as it was stated that "the Corporation shall, in the conduct of the Television Service, observe and perform such conditions and restrictions, and do such acts and things, whether in relation to the Television Stations or otherwise howsoever, as may be prescribed by the Postmaster General in writing."

From the standpoint of independence, there were the following slight gains:- In Section (b) of the Objects Clause 3 in the new Charter, the Corporation was required to develop the Broadcasting Service by such means as might be agreed with the Postmaster General instead of, as formerly, by such means as might be permitted by the Postmaster General. From that change of wording, it was reasonable to imply that the Postmaster General would not arbitrarily impose any condition on the Corporation, but would seek to

achieve his purpose by negotiation.

The Corporation were still bound by Section 4 (2) of the new Licence to broadcast any announcement or other matter at the request of the Government Department, but it was now armed, as recommended by the Ullswater Committee, with a specific right to announce that the matter in question was broadcast at the request of a named Department. As formerly, the Postmaster General reserved the right under Section 4 (3) to require the Corporation, by notice, to refrain from broadcasting any matter specified, but it was now provided that any such notice might specify whether or not the Corporation should have the right to announce that the notice had been given. This was no very great gain, as it was likely that in precisely those cases where the Corporation would wish to announce that the veto had been exercised permission to announce this would be refused. Thus a great constitutional defect in the formal structure of the Corporation was left unremedied, and the Corporation placed in the possible position of having to take action to which it did not consent, and for which it was unable to account to the listening public.

Provision was made for the special conditions on the

outbreak of war by a Deed supplemental to the main Licence from the Postmaster General which was attached to the Royal Charter. This supplemental Deed, dated 3rd August 1938, provided that, in the event of a national emergency, the Postmaster General would notify the Corporation of the transfer of part of his powers to another Minister whose directions the Corporation would be bound to accept to the extent of these transferred powers. On 5th September 1939, the Postmaster General gave the prescribed notification, and set out in a schedule the powers which he proposed to transfer to the Minister of Information. These transferred powers gave the Minister of Information the following particular rights:-

1. To prescribe broadcasting hours.
2. To give notice vetoing any broadcast matter, either particular or general.
3. To prescribe conditions for the Television Service.
4. To approve the employment of an officer or servant who is not a British subject.
5. To approve the use of the Stations for messages other than broadcast matter.
6. To secure control in an emergency.

In addition, the Chairman of the Corporation gave an undertaking that the Corporation would accept the direction

of the Minister of Information in all matters pertaining to the war effort.

The Chairman's undertaking referred, of course, to all the services of the Corporation - Home, Empire and Foreign. The degree of control over the Home, Empire and Foreign Services was not identical. It was declared to be absolute in the case of the European Service¹, and the slow emancipation of the Corporation in respect of this Service is described in a later Chapter. It is proposed in this Chapter to confine attention to the Home Service in which the inroads on the constitutional freedom of the Corporation were, to some extent, referable to the character of the particular Ministers and the circumstances of the time. Thus, on 4th October 1939, Lord Macmillan stated:- "The position of independence secured to the Corporation, with the approval of Parliament in time of peace, has not been altered."² But the appointment in May 1940 of Mr. Duff Cooper marked a change. He said in the course of a Debate in the House of Commons on 11th June 1940:- "So far as pronouncements on political subjects and reports of news are concerned, however, I have satisfied myself that machinery now exists whereby I can exercise complete control over what is said on important political matters."³

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| 1. | H. of C. | Vol. 385. | Col. 531. |
| 2. | H. of L. | Vol. 114. | Col. 1282. |
| 3. | H. of C. | Vol. 361. | Col. 1240. |

Later, on 12th March 1941, he said:- "The Government's policy has been to maintain the independence of the B.B.C." ¹ but in July of the same year, he tested the powers to which he had referred in his earlier statements. In spite of the objection of the Board of Governors to a broadcast on the subject of P.G. Wodehouse by Mr. W.N. Connor of the Daily Mirror, he confirmed his instructions that it should be given, and on 15th July, it was broadcast and raised a storm of criticism. It was only after Mr. Duff Cooper had left the Ministry of Information on 20th July for the Chancellorship of the Duchy of Lancaster that he frankly accepted full responsibility for the broadcast by a letter to the 'Times' published on 22nd July.

The attitude of the succeeding Minister, Mr. Brendan Bracken, was at first "that the Board of Governors recognise that it is necessary for the Government to control the policy of the B.B.C. in time of war in matters affecting the war effort." ² Alongside this statement of policy must be read the Lawyers' opinion on the relationship between the British Broadcasting Corporation and the Ministry of Information cited by the Minister on 8th April 1943 in the House of Commons as follows:- "The Minister's

1. H. of C. Vol. 369. Col. 1272.
2. H. of C. Vol. 385. Col. 331.

powers under the Emergency Powers Act do not extend to giving any positive directions to the B.B.C. as to what it should do on its services. It (sic) does, in fact, possess these powers, but from other sources. Firstly, the Chairman of the B.B.C. gave an undertaking to the then Minister of Information, in the first year of the war, that the B.B.C. would accept his direction in all matters pertaining to the war effort. Secondly, the fact that the B.B.C. now derives its finances directly from money voted by Parliament puts the Minister in a position to claim that the services for which he obtains Parliamentary money should be conducted in a manner that at any rate is generally satisfactory to himself."¹

During the tenure of Mr. Brendan Bracken as Minister of Information, the facts point to a gradual increase in the independence of the Corporation in keeping with the improvement in the war situation generally. As might have been expected, it was only on rare occasions that the Corporation found itself unable to take its own decisions, but such a one arose in the case of Mr. Gibbs' broadcast on Defence Regulation 18B. which dealt with the judgment in the Case of Rex V. Liversedge in November 1941² - a judgment which

1. H. of C. Vol. 388. Col. 915.

2. H. of C. Vol. 376. Cols. 2189-2224.

was highly controversial and very severely criticised by jurists of distinction, such as Lord Atkin. The script was shown to the Home Office, which objected to the broadcast being given at all, and urged that it should be cancelled. This view was accepted by the Director General of the Ministry of Information who ordered the cancellation of the broadcast in disagreement with the Corporation. The Manchester Guardian's comment on the case is worth quoting:-- "The Government did not come well out of yesterday's Questions and Debate about the stopped broadcast on Regulation 18B. It now appears that the Ministry of Information did not hear of the broadcast (owing to some unfortunate mischance) until a few hours before it was timed to be given, and since it involved the Home Secretary whose functions the broadcast was discussing, referred it to him. The Home Secretary did not like it; therefore, it was summarily cancelled. Sir Percy Harris says the broadcast was studiously impartial and detached; if any particular sentence were objected to, it could easily have been blue pencilled. Mr. Thurtle, for the Government, claims that it was not impartial. The sentences he quoted from it did not impress the outsider as being other than an accurate description of

the Government's position. The real reason for the fuss, we may guess, is Mr. Morrison's sensitiveness about Regulation 18B. He has acuteness to recognise that even the most impartial account of the controversy would put him in a bad light."

The subject was raised again by Mr. Mander in a Parliamentary Question on 28th June 1942, and in the course of supplementary questions, Mr. Noel Baker asked:- "Is it right that the B.B.C. should consult a Minister, as they recently consulted the Home Secretary, on a matter of policy which did not affect public security, and upon which there was a great deal of public controversy?" The Minister of Information (Mr. Bracken) replied:- "I tell the Honourable Member, quite frankly, that if I had seen that particular question, I should not have transferred it to the Home Office."¹ But he might very well have acted contrary to the wishes of the Corporation on his own responsibility.

The publicity given to this case probably had a useful effect on the attitude of the Government. It certainly marked a steady growth on the Corporation's return to freedom. On 2nd March 1944, the Parliamentary Secretary stated "My Right Hon. Friend, the Minister of Information,

has set his face resolutely against any attempt to interfere with B.B.C. programmes, and I am here to-day to say that my Right Hon. Friend has no intention at all of changing the direction of his face in that matter."¹

After the extinction of the Ministry of Information, Mr. Attlee, the Prime Minister, announced in the House of Commons on 7th March 1946 that the Postmaster General would be responsible for the Broadcasting Vote, and in the ordinary course, Questions in the House of Commons on Broadcasting would, in ordinary circumstances, be answered by the Assistant Postmaster General (the Postmaster General was a Peer). The Prime Minister went on to say that Parliamentary Questions on major broadcasting policy should be addressed to him. Since then, the Prime Minister has asked the Lord President of the Council to exercise responsibility on his behalf. It was stated in the White Paper of July 1946 that, as a general rule, the Lord President would answer Questions on major broadcasting policy unless the matter at issue was clearly within the province of one of his Ministerial colleagues. As with so many other points, the Lord President took the opportunity to give a gloss on this point in the Debate on Broadcasting of 16th July 1946.

He said:- "Just as the B.B.C. is independent of the Government in its day to day affairs, so also are the Government independent of the B.B.C. Ministers are free to comment critically on the B.B.C. if they think criticism warranted, and they reserve the right to do so. Just as the B.B.C. need not walk in fear and trembling of the Government, neither should they submit to pressure from the Opposition or from famous personalities or interests, so have the Government the right to fair play from the Governors of the B.B.C. and so have the Government's critics."

The appointment of the Lord President as the responsible Minister in Parliament on major broadcasting policy represents an interesting reversion to the original suggestion of the Corporation in their evidence before the Ullswater Report, and is in line with the recommendation of the Ullswater Committee although they did not name the Lord President particularly.

The peculiar relationship proposed for the Corporation and the Foreign Office is fully discussed in the Chapter on the "B.B.C. in the International Sphere" as also the recommended liaison with other Departments of the Government.

PARLIAMENTARY CONTROL of BROADCASTING.

Before the new Charter became operative, it was laid on the Table of the House of Commons, and was the subject of debate, thus recognising the Parliamentary interest in the new Broadcasting Service. Constitutionally, Parliamentary approval was unnecessary, as the Service was inaugurated by Royal Charter, but the precedent was carefully followed in the case of the Second Charter. Apart from this constitutional procedure, it was open to Parliament, in several different ways, to review the conduct of the broadcasting service, and, if desired, to influence the actions and policy of the Corporation. Opportunities for a Parliamentary review of broadcasting were presented every year by the expiring Law Continuance Bill which provided inter alia for the renewal of the Wireless Telegraphy Acts under which the Corporation and its listeners were licensed, and by the presentation of the Post Office Estimates in which was entered, for approval, the amount of Licence Revenue to be allocated to the Corporation for the financial year. It was also possible in the House of Commons to initiate a discussion on a specific Resolution or a Motion for the adjournment of the House, and such discussions did, in fact,

take place on several occasions. Last, but not least, there was the mechanism of Parliamentary Question and Answer which compelled the attention of the Corporation to the point at issue.

The value of this was recognised by Members of Parliament. Mr. George Mathers stated:-¹ "I think that this House is as important a sounding board for the opinion of the people of the country as any possessed by the B.B.C.", and Sir Edward Grigg, in the course of a Debate,² "I think, as a matter of fact, it is better to leave all these questions to the Directors of the B.B.C. themselves. After all, statements about what the House of Commons wants are read by the Directors."

The question of Parliamentary control of Broadcasting was reviewed by the Ullswater Committee, which felt that a better opportunity would be presented for Parliamentary review if the Broadcasting Estimates were presented separately. It was also considered advisable that the Corporation's Annual Report and Accounts should be presented to Parliament in fuller detail, with information regarding the major items of capital expenditure in the ensuing year.

- It was not suggested, however, that the extent of Parlia-

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| 1. | H. of C. | Vol. 397. | Col. 2023. |
| 2. | H. of C. | Vol. 402. | Col. 900. |

imentary criticism and control over detail should be enlarged, although it was felt that there should be regular and adequate occasions for discussion on broad matters of policy.

In their published Observations on the Ullswater Report, the Governors of the Corporation did not welcome the obligation to submit annually to Parliament the major items of contemplated capital expenditure which would have tied their hands and involved an undesirable encroachment on the Corporation's independence. They were supported in this view by the Government in the White Paper of June 1936 which, while it accepted the recommendation that Broadcasting should have a separate estimate of its own, did not consider it desirable that capital expenditure proposed by the B.B.C. should be included in the estimate. The Government also stated that they had been assured by the British Broadcasting Corporation that information on contemplated developments which could be made available to Parliament would be readily forthcoming. That was the position when the Second Charter and Licence became operative on 1st January 1937.

In the course of years, Members of Parliament have shown some difficulty in realising the incompatibility

between maintaining the independence of the Corporation and at the same time bringing the Service under close Parliamentary control. There are two reasons for this difficulty the one arose from the constitutional weakness of the Corporation which, from a legal documentary point of view, has scarcely any independence at all, except what is conceded by the Minister responsible for broadcasting, formerly the Postmaster General, and during the war, the Minister of Information. The other difficulty arose from the Ministerial uncertainty as to what are broad issues of policy for which they ought to take responsibility, and what are minor matters of domestic policy and matters of day to day control which should be left to the free judgment of the Corporation in accordance with the original definition propounded in the House of Commons on 15th November 1926 by Sir William Mitchell Thomson (later Lord Selsdon).¹ The war intensified these difficulties, as certain branches of broadcasting, notably the foreign services openly came under the direction of the Government when, to use his own phrase, the responsible Minister described the position as anomalous.² The situation can be illustrated from the following selection of utterances by Members of Parliament. "If we raised a

1. H. of C. Vol. 199. Cols. 1563-1583.

2. "B. Vol. 377. Col. 1754.

broad issue, we were told that it was so broad that the Postmaster General could not deal with it because it was a matter of Cabinet policy and if we raised other matters, we were told that they were so small that they should be left to the discretion of the Corporation.

(E. Evans, 6th July 1936)¹. "We have heard it suggested that the Minister must have less to do with the B.B.C. than in the past. I think that he must do one of two things. He must either have much less to do with it or much more." (Mr. W.J. Brown, 7th July 1942)².

"The Minister of Information has said that he has no control over the B.B.C. except in respect of foreign news. In general, I do not think that is right. I do not believe that there ought to be Corporations in this country over which Parliament, practically speaking, has no control." (Major Petherick, 5th August 1943)³.

The variations in the Ministerial attitude are discussed under the heading "Ministerial Control". There was full realisation at a Ministerial level of the impossibility of reconciling freedom of broadcasting with close Parliamentary Control. Thus, in a Debate during the latter part of the war, Sir Edward Grigg said:- "The House is apt to be

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| 1. | H. of C. | Vol. | 314. | Col. | 893. |
| 2. | " 2. | Vol. | 381. | Col. | 711. |
| 3 | " 3. | Vol. | 381. | Col. | 2583. |

unreasonable on the question of the control of the B.B.C. Quite definitely, I think the House was right when it said that no Government Department should have direct control of the B.B.C. I hope it will stick to that contention."¹

After the war, when it was clear that close Government supervision of broadcasting even to Europe was no longer necessary or desired by the Government itself, the demand for close Parliamentary control persisted. It emerged in the Report of Select Committee on Estimates, referred to in the Chapter on Finance, and the danger of the proposals of the Select Committee were fully exposed by Mr. Brendan Bracken in the Debate on 16th July 1946.² The demand continued, even after the confirmation of independence in the White Paper of July 1946, and the warnings in the subsequent Debate. This was shown by the Parliamentary Question of July 23rd 1946 on the setting up of an Advisory Committee for Scotland when the Lord President of the Council, Mr. Herbert Morrison, replied:- "Members of the Opposition last week who were arguing against the Government having an undue hand in the B.B.C. are now asking that the Government and not the B.B.C. should appoint this Committee. I wish they would reconcile their views."³

1. H. of C. Vol. 401. Col. 900.
2. H. of C. Vol. 425. Col. 1109.
3. In 'Scotsman' Report of 24th July 1946.

But against the inclination to challenge or limit the independence of the Corporation, Members of Parliament have shown themselves sensitive to the danger of the Corporation being subjected to pressure by a Political Party¹ or the Government² or any Department of the Government³.

They have also shown a certain jealousy of any tendency on the part of the Corporation to encroach on the privileges of Parliament. Thus, when the British Broadcasting Corporation was allowed to see and comment on the Ullswater Report before it was presented to the House, Sir Percy Harris said in the House of Commons:- "Does not the Right Honourable Gentleman realise that the House of Commons has the first right to see any Report of the Committee appointed in reply to the initiative of this House."⁴

As regards White Papers and Official Reports which have been prepared for submission to the House, there was a widespread feeling that such documents, even when published, should not be the subject of broadcasts other than brief factual references in News Bulletins until they had been considered by the House. Thus an objection was made

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| 1. H. of C. | Vol. 388. | Cols. 835 - 923. |
| 2. " | Vol. 378. | Col. 649. |
| 3. " | Vol. 376. | Cols. 2068 - 2070. |
| " | Vol. 425. | Cols. 1109 - 1111. |
| 4. | Hansard. | Vol. 310. H. of C. Col. 600. |

when Sir Frank Stockdale gave a broadcast on his mission to the West Indies before his official report had been submitted. Dr. Morgan asked the Secretary of State for the Colonies whether the broadcast on 5th January by Sir Frank Stockdale was made with the approval of the Colonial Office, whether he was aware that no report on this subject has yet been submitted to Parliament, as was recommended by the last West Indian Royal Commission, and why such information as was broadcast was not first submitted to Parliament either in a Command Paper or in a Parliamentary Statement providing opportunities for discussion and deliberation," (27th January 1943)¹.

The action of the Corporation in allowing Sir William Beveridge to give a supposedly factual broadcast on his Report on Social Insurance as soon as it was published was also criticised by Mr. Kenneth Pickthorn (8th April 1943). He said:- "Sir William Beveridge was Chairman of a Committee - Has there been any previous case in which the B.B.C. allowed or invited on their own a Chairman to explain his own stuff on the day before his Report came out or the day after?"²

1.H.ofC.Vol.	386.	Col.	512.
2. " Vol.	388.	Cols.	856 - 857.

In the Debate on the White Paper of July 1946, Sir Ian Fraser, until very recently a Governor of the Corporation, said:- "There was an occasion during the latter part of the war when the Minister of Information (Mr. Brendan Bracken) came to the B.B.C. and supported a plea from one of the Ministers of the Government, whose name I will not mention, that he should be allowed to broadcast about a Measure which he was just bringing before Parliament. The Board of Governors of the B.B.C. stood up against the direction as the matter was coming up for Debate in Parliament. I do not believe that the B.B.C. should prejudice matters of State in Parliament by presenting strong controversies about them before they come to Parliament."¹

It may perhaps be said that this practice has now become elevated into a principle, as, in answer to a Parliamentary Question on 4th March 1946, the Lord President of the Council said:- "It is a perfectly legitimate action that a new Statute should be explained to the Nation, but while a Bill is subject to Parliamentary discussion, the Government would be taking an unfair advantage of their position if they were to broadcast about it, unless there were exceptional circumstances."²

1. H. of C. Vol.	425.	Col. 1127.
2. " Vol.	420.	Col. 21-2.

EDITORIAL RIGHTS.

Eleven days after the Corporation came into existence on 1st January 1927, the Postmaster General wrote asking the Corporation to refrain from broadcasting statements on public policy, and this prohibition has remained in force ever since. This prohibition was also notable as the only example of the formal exercise by the Postmaster General of his powers under Clause 4 (3) of the Licence. The point was considered by the Ullswater Committee¹ which, in paragraph 7 of the Report, offered the opinion that they thought it right that the Corporation should refrain, as in the past, from broadcasting its own opinions by way of editorial comment upon public affairs. The Government in the White Paper of June 1936 endorsed this opinion and extended the restriction to the publications of the Corporation as well as the broadcast programmes. No reason was given for the extension which did not arise out of any particular case in which the rule had been offended.

In a Memorandum, dated 30th January 1937, supplementary to the 1937 Charter and Licence, the Postmaster General again exercised his powers under Clause 4 (3) of the Licence to give notice of his desire that the Corporation should

refrain, as in the past, from sending out any broadcast matter expressing the opinion of the Corporation on current affairs or matters of public policy. The Postmaster General added that he understood that the Corporation had already decided to apply a similar restriction to its publications, and he asked for formal confirmation of this. It will be observed that the formula became slightly enlarged from "statements on public policy" to "expressions of the opinion of the Corporation on current affairs or matters of public policy." In a reply to the Memorandum, dated 9th February 1937, the Director General of the Corporation, Sir John Reith, as he then was, stated:- "I confirm that the Corporation has already applied to its publications the restriction on the broadcasting of editorial opinion on current affairs or matters of public policy which has been in force for the last nine years in regard to the broadcast programmes. I understand that current affairs are not to be interpreted in a sense that would exclude editorial opinion as given in the past on such public questions as litter, ribbon development, and the like which are not matters of political controversy."

The Corporation's observance of the rule against introducing its own editorial comment became the subject of

great vigilance on the part of Members of Parliament after the outbreak of war when the importance of the News Bulletins, and the manner of their presentation and announcement became matters of vital public interest. Thus, on 2nd April 1941, Mr. Hammersley asked whether the Minister of Information was aware of the public irritation at the inclusion of inappropriate ~~animad~~ versions in the News Items broadcast by the British Broadcasting Corporation and whether, if no news was available, he would control the time allotted to the news. Mr. Harold Nicolson (then Parliamentary Secretary to the Ministry of Information) replied:- "The B.B.C. do not include in their News Bulletins any commentaries which are not either supplied or approved by responsible Departments. My Right Hon. Friend has, however, been aware for some time that irritation is caused if News Bulletins fail to be wholly objective, and has requested the B.B.C. to render them as factually as possible."¹

The same point was raised three times by Sir Herbert Williams on 18th February,² 18th March³ and 6th May 1942⁴ and in his replies, the Minister of Information stated:- "I have stressed to the B.B.C. the importance of giving the plainest possible news" and "I have several times suggested

1. H. of C. Vol. 371. Col. 257.
2. H. of C. Vol. 377. Col. 1782.
3. H. of C. Vol. 378 Col 148
4. H. of C. Vol. 379. Cols. 1362 - 1717.

that they should take notice of the suggestion which has been made in this House before", and "I am quite sure that they (the B.B.C.) are doing their best to meet public criticisms about their Bulletins and if occasionally they do introduce explanatory matter, they only do so in order to make plain to ordinary listeners the significance of what is happening." Sir Herbert Williams, who constituted himself a watch dog in the matter, also raised the question of British Broadcasting Corporation's comments in the Forces News Letter which was compiled by Members of the News Division and broadcast weekly on Sundays by announcers.

As a matter of broadcasting technique, the rule is fairly easy to apply to such items as programme announcements, News Bulletins, and News Letters prepared by Members of the Corporation's Staff, but there is greater difficulty in the case of commentaries when perfect balance can only be achieved at the cost of interest in the programme.

The commentaries in the European Service, such as "The Man in the Street" and "Editorial Comment" were in a special category, for while they offended against the rule established by the Postmaster General's prohibition, the policy of the European Service was directed not by the Corporation but by a Government Committee.¹ Discussion

of these broadcasts in the House of Commons confirmed this view. In answer to a Parliamentary Question, the Minister of Information stated that "It is necessary in time of war for the Government to control the policy of the B.B.C. in matters affecting the war effort," and while admitting that particular broadcasts in the Service might have justified criticism made no reference to the propriety of "Editorial Comment" as such.¹

No difficulty has ever arisen in respect of the Corporation's publications, The Listener and The Radio Times. But recently a question was raised in regard to the publication of a Speech by Mr. Churchill in "London Calling". The Prime Minister, Mr. Attlee, defended the publication as there was no opinion expressed in the Journal on the merits of his arguments.²

ADVISORY COMMITTEES.

The Corporation was specifically invested by the Charter³ with powers to appoint Advisory Committees, and made use of these powers. In addition to Committees on various specialised subjects, the Corporation appointed a General Advisory Committee. The question of Advisory

1. H. of C. Vol. 379. Col. 1362.
H. of C. Vol. 377. Col. 1552.
H. of C. Vol. 392. Cols. 890 & 1392.
2. H. of C. Vol. 421. Col. 206.
3. C.M.D. 2756 of 1926.
C.M.D. 5329 of 1936.

Committees generally was considered by the Ullswater Committee¹ which devoted a good deal of attention to the subject. The Ullswater Committee was much attracted by the idea of Advisory Committees as a means of keeping the Corporation informed of the requirements of listeners while recognising that final decision and responsibility must rest with the Corporation. They felt that the scheme of Advisory Committees, both general and specialised, should be developed, particularly in the Regions so as to give means for the expression of informed public opinion. In Parliament and the Press, the Corporation was often accused of ignoring public opinion, and its constitution was such that in programme matters, it had no direct responsibility to the public except in so far as Parliament, through the appropriate Minister, could in extreme cases rescind the Charter or dismiss the existing Board of Governors.

An exception was made by the Ullswater Committee in the case of the Central Council for School Broadcasting and the Scottish Sub-Council which accepted responsibility for the material presented to schools. It was felt that broadcasting to schools in England, Scotland and Wales respectively should

be controlled by independent Councils financed out of the Corporation's funds. This recommendation had the support of the Corporation and the Board of Education. In their published Observations on the Report of the Ullswater Committee, the Governors of the Corporation expressed doubt regarding the wisdom of setting up a complete system of general and specialist Advisory Committees in all Regions. They explained that they had experimented with Regional Advisory Committees. The results were very uneven in that some still functioned while others had languished through lack of material for deliberation. Any attempt to compel, for uniformity's sake, the comprehensive system envisaged was deprecated.

The Government decided, however, to endorse the views of the Ullswater Committee, and in the White Paper of 1936¹ published an assurance which was given by the Governors of the Corporation that they concurred in principle with a comprehensive system of Advisory Committees.

The Selsdon Committee on Television² which reported in 1935 re-introduced the plan of making a Committee appointed by the Postmaster General share some of the responsibilities of the Corporation, a plan which first emerged in the

1. C.M.D. 5207 of 1936.
2. C.M.D. 4793 of 1935.

recommendation of the Sykes Committee for the setting up of a Broadcasting Board appointed by the Postmaster General to assist ^{him in connection with} the then British Broadcasting Company. The recommendation was accepted, and in 1936, the Government appointed a Television Advisory Committee under the Chairmanship of Lord Selsdon upon which the Post Office, the Department of Scientific and Industrial Research, and the Corporation were represented. The Committee continued to meet until the outbreak of the war put an end to the Corporation's activities in Television.

This Advisory Committee has to be sharply distinguished from the Advisory Committees appointed by the Corporation, as it represents an important restriction on the powers of the Corporation. The initiative in respect of it was taken by the Postmaster General. It was housed at the Post Office, and an Official of the Post Office was its Secretary.

Another Advisory Committee of an unusual sort was the Central Council for School Broadcasting and the Central Committee for group listening, both of which worked on Grants from the Corporation and with their own staff. The Corporation retained over-riding power in respect of policy, finance and programme production, but, subject thereto, the functions of the Central Council included the supervision of

programme arrangements, the organisation of research and experiment, and the control of the listening end of the broadcasts to schools.

After the outbreak of war, it was not practicable to ask the large net work of Councils and Committees established in peace time to carry on meetings. But ^{the majority} ~~a number~~ of the ~~nine~~ important Committees carried on and gave valued help to the Corporation notably:- Central Appeals, Advisory Committee, Central Committee for Group Listening, Central Music Advisory Committee, Central Religious Advisory Committee, Central Council for School Broadcasting, and the Scottish Council for School Broadcasting.

Following upon the recommendation of the Hankey Television Committee¹, the Government, on 27th November 1945, decided once again to set up a Television Advisory Committee of Representatives of the interested Government Departments, and of the Corporation. The Committee was appointed under the Chairmanship of Mr. Garro Jones, M.P. to advise the responsible Minister on Television Policy and the Secretariat was provided by the Ministry of Information and the Post Office. The Government Departments represented were the Treasury, Post Office, Board of Trade, Ministry of Supply, Department of Scientific and Industrial Research and

the Ministry of Information. This Committee is discussed more fully in the Chapter on Television.

It was stated in the White Paper of July 1946¹ that this Committee met frequently to consider and report to the Postmaster General (as the Minister responsible for broadcasting after the extinction of the Ministry of Information). It also maintained close liaison with the radio industry and, as necessary, with other interests concerned with various aspects of the development of the Television Service.

But apart from this Advisory Committee which was the creature of the Government and not of the Corporation, the desire was expressed in the White Paper that, in order to ensure that the regional directorates of the Corporation were in close touch with movements of thought and opinion in their regions, there should be established in each region a Regional Advisory Council for the purpose of advising the Corporation on all matters affecting the regional programme policy. It was suggested that the composition of these Bodies should be broadly representative of the general public of the region and members should be chosen for their individual qualities and not as representatives of particular interests. This was really a re-emphasis of the proposals of the Ullswater Committee.

1. C.M.D. 6852 of 1946.

In the Debate of 16th July 1946, the Lord President, Mr. Herbert Morrison, gave a gloss on the White Paper, and in respect of the Advisory Committee for Scotland suggested that it would advise the British Broadcasting Corporation on Scottish Programmes and conduct arguments at will. The precise significance of the phrase "conduct arguments at will" is not clear, and is important as it was mentioned that there would be similar Advisory Committees for Wales and three English Regions. The matter of the appointment of these Committees was further elucidated by Mr. Herbert Morrison in reply to a Parliamentary Question on 23rd July 1946 when he stated that full account would be taken of any views expressed by the Secretary of State for Scotland to the Governors.

An interesting side light on Advisory Councils, as they previously existed, was given by Mr. Arthur Mann, a former Governor of the British Broadcasting Corporation in a letter to the 'Times' dated July 16th 1946. He said:- "My own experience as a Governor for five years at Broadcasting House inclined me to believe that Advisory Councils were apt to be regarded by the Chief Officials as fences against criticism and useful debating points in favour of the continuance of the B.B.C. monopoly, rather than as Bodies whose ideas and suggestions were to be

allowed to stimulate and inspire programme policy."

CHAPTER THREE.THE CORPORATION and the BROADCASTING
of POLITICAL CONTROVERSY.

Party broadcasting by Members of Parliament.
Political broadcasting at election time, Broad-
:casting of Reports of Parliamentary Proceedings,
and Political Broadcasting generally.

Eleven days after the Corporation started to function on 1st January 1927, the Postmaster General acting under Clause 4 (3) of the Licence, wrote asking the Corporation to refrain from broadcasting (a) expressions of opinion by the Corporation on matters of public policy, and (b) statements involving matters of political, religious and industrial controversy. This executive action ran con-
:trary to the recommendation of the Crawford Committee, and although it defined the position officially for the first time, it was not accepted tamely by the Corporation which pressed for the removal of prohibition (b). On March 5th 1928, the Prime Minister, in reply to a Parlia-
:mentary Question by Sir Ian Fraser, announced the removal of prohibition (b)¹. He added that the Corporation had

1. H. of C. Vol. 214. Col. 812.

been informed that it would be expected to use the discretionary powers entrusted to it in accordance with the spirit of the Crawford Committee's Report. On the same day, the Corporation received a letter from the Post Office reproducing the substance of the Prime Minister's statement with a saving clause that the Government held themselves free to modify the decision after further experience, and that the provisions of the Licence covering the control of the service in case of National Emergency remained in full vigour.

Of the topics referred to specifically by the Postmaster General in the original ban on controversy, namely political, religious and industrial topics, the first - politics - raised the greatest number of problems, which are discussed later in detail. The second - religion - has caused so little public criticism that it received no specific notice in the Report of the Ullswater Committee. The third topic - industrial controversy - if enlarged to include all matters of sociological interest, has from time to time aroused criticism, usually from some minority section of the listening public, holding unorthodox views. The question of how far the Corporation should represent

minority opinions in a service of broadcasting intended for information and education is a difficult one. The Ullswater Committee wrote:- "If broadcasting is to educate public opinion, it must look upon the questions of the hour from many angles" (Para. 85), and, in a later paragraph "There is an inevitable tendency in the general programmes of the Corporation to devote more time to the expression of new ideas and the advocacy of change in social and other spheres than to the defence of orthodoxy and stability, since the reiteration of what exists and is familiar is not so interesting as the exposition of what might be."¹.

The question, therefore, arose as to what were the tests to be applied which qualify for the right to broadcast a particular point of view, and the best answer is probably supplied in the Resolution passed by the House of Commons on 22nd February 1933 as follows:-

"Controversial matter is rightly not excluded from broadcast programmes, but the Governors should ensure the effective expression of all important opinion relating thereto, and only by the exercise of the greatest care in the selection of speakers and subjects can the function of the Corporation be fulfilled and the high quality of the British Broadcasting service be maintained."²

1. C.M.D. 5091.
2. H.C. of C. Vol. 274. Cols. 1811-1868.

The Corporation has accepted this Resolution as a guide to policy, and minority opinions are only broadcast if they can be justified as important or of exceptional interest, and if they do not run contrary to the public interest. The decision as to whether or not an opinion is of sufficient importance, and whether or not it runs contrary to the public interest is one of the chief selective functions of the Corporation, and in the Report of the Ullswater Committee, the opinion was expressed that "the British Broadcasting Corporation has exercised the responsibility confided to it with wisdom. In the trust that this policy will continue, we make no special recommendation except with regard to political broadcasting, but would leave to the British Broadcasting Corporation the responsibility for choosing speakers and subjects, Ensuring any necessary consultation, preserving an impartial and representative balance, and arranging that controversial opinions are expressed in a proper context."

The Corporation continued to follow a cautious policy and, in 1942, it was summarised by the Hon. Harold Nicolson, when speaking as a Governor of the Corporation

in the series "Westminster and Beyond" he said:-

"It is our duty not merely to inform and entertain
 "our own public, but to present a picture of British
 "life and character which shall be coherent, balanced
 "representative and true."

and then went on:-

"The British Broadcasting Corporation is not like a
 "newspaper which can express its editorial opinion
 "or repudiate responsibility for what it publishes;
 "nor is it a Government Department like the Post
 "Office, which is obliged to accept and carry any
 "letter however boring or silly that letter may be.
 "The British Broadcasting Corporation is an organis-
 "ation entrusted with the handling of the most
 "potent instrument of publicity that has ever been
 "devised. It must be inspired throughout by the
 "utmost carefulness, which is something wholly
 "different from timidity. And that carefulness must
 "take constant account of the fact that when an idea
 "or an opinion is broadcast, it at once loses its
 "true proportion and becomes magnified or amplified
 "beyond life size. In giving time on the air to some
 "minority opinion (however sincere or useful that
 "opinion may be; however ardently we may agree with
 "it ourselves), it is the duty of the British Broad-
 "casting Corporation to consider, not merely
 "whether we are being fair to those who agree with
 "this opinion, but whether we are also being fair to
 "those to whom that opinion is a very abomination.
 "It is for this reason that, in controversial
 "matters, we generally try to adopt a round table
 "method. I do not call that cowardice; I do not
 "call it a denial of free speech; I call it a care-
 "ful and difficult maintenance of responsibility.
 "We often make mistakes and sometimes we make
 "blunders, but when you have to magnify opinion a
 "thousand times beyond life-size, it may happen that
 "free speech does not turn out as fair speech; and
 "our rule is, when in doubt, to prefer what is fair."

It was significant of its importance that the

Ullswater Committee made specific recommendations only in regard to political broadcasting. The fact that the Corporation had a de facto monopoly of broadcasting in Great Britain made it the only means by which this most powerful influence could reach British listeners. In the following pages, the topic of political broadcasting is discussed in considerable detail on account of its great influence on the constitutional development and direction of the Corporation. It is discussed under the separate but related headings of Party Broadcasting, Political Broadcasting at Election Time, Broadcasting of Reports of Parliamentary Proceedings and Political Broadcasting generally.

POLITICAL BROADCASTING by MEMBERS OF PARLIAMENT
and OTHERS.

The Labour Party took the initiative in asking for facilities for political broadcasting, and the Corporation at once communicated with the Conservative and Liberal Parties. The Right Hon. J.C.C. Davidson, replying on behalf of the Conservative Party on 29th March 1928, enquired if the Corporation would draw up rules of general application which would enable the various political

parties to know the scope of the privileges to which they would be entitled.

The Corporation did draw up rules for an experimental procedure which amounted to "equal facilities to the three Parties in successive weeks (as an introduction to political broadcasting) on the understanding that these occasions would be used for the enunciation of Party Policy in general; similar facilities during the election period, and as a routine arrangement, throughout the year (or at any rate when Parliament was in session), equal opportunity to the Government of the day with both Parties in Opposition, at fortnightly intervals. The letter setting out this experimental procedure also indicated that it was proposed to broadcast from the Lord Mayor's Banquet; and that, if facilities to broadcast from the House of Commons were declined, the Corporation would enable the Chancellor of the Exchequer to give a factual, and, as far as possible, a non-controversial, statement from a Studio on the night following the introduction of the Budget. The letter concluded "It may be that certain other explanations of Government intention will be broadcast, either from the House or a Studio, without being

regarded as controversial occasions involving Opposition Speeches in reply."

These proposals were accepted by the Conservative Party without reserve, and, in principle, by the Labour Party, but they were opposed by the Liberal Party, and in spite of a meeting at the House of Commons on 21st May 1928, no agreement could be reached. The main issue was whether or not the Government should enjoy an advantage ^{by} being given the right to reply to each Opposition Address. The idea of a rota of political speeches was, therefore, abandoned until arrangements had to be made for the General Election of 30th May 1929. In the interval, the first discussion in which Representatives of all three Parties took part on the same day was broadcast on the Derating Bill in January 1929, and, on 25th April, Mr. Winston Churchill created a precedent by being the first Chancellor of the Exchequer to broadcast on the Budget the day after its presentation to Parliament.

In the autumn of 1929, an official protest from the Conservative Party that the Conservative point of view had not been fairly represented in a symposium of Talks entitled "Points of View" led to an enunciation of policy by the Chairman of the Corporation, Lord Clarendon. He

stated in a letter to Mr. Davidson:- "With regard to Ministerial explanations of political or administrative measures, the policy has always been that, with the exception of the Budget statements, so long as a major political measure is still under discussion by the House, like the Derating Bill, the discussion method is the right one to adopt. When a measure has passed through all its stages, there is not the same objection to an explanatory talk of a non-partisan kind by the Minister associated with it." The principles contained in this statement of policy were further elaborated in a Memorandum which was submitted on 18th November 1930 to Representatives of the three Parties at a meeting in the House of Commons^X.

The terms of the Memorandum were as follows:-

A. Party Political Speeches.

1. Allocation by B.B.C. of 2 (possibly 3) months each year in which one night weekly shall be available to Parties in rota of their deciding. November and May (for Budget) proposed. Subjects and Speakers with Parties.
2. During General Election periods, equal opportunity after dissolution (2 or 3 occasions each) and probably special series on rota basis.

B. Discussions.

1. An hour's discussion periodically on Party Political Issues of current interest. One Speaker from each Party with right of reply to Government Speaker if on Government measure. Subject chosen by B.B.C. but suggestions might also come jointly from Parties. Speakers nominated by Parties (subject to microphone suitability).

C. Symposiums. (Weekly Talks over a period).

1. Those which involve Party Political Issues. Parties to nominate one Official Representative each (or on rota basis) and B.B.C. to invite such other Speakers as they thought desirable for expert or individual exposition.
2. Those which do not involve any definite Party orientation. No Party nominations here.

This Memorandum was generally agreed, but the Parties noted the claim of the British Broadcasting Corporation to the effect that the Corporation did not regard themselves as bound in every case to secure the agreement of the three Political Parties as a preliminary to proceeding with a political broadcast. In the view of the Party Representatives, it was held that if the British Broadcasting Corporation proceeded in face of failure to secure such an agreement the question of the proper use of the Corporation's discretionary power might be re-opened, and the present arrangement by which the three Parties had agreed to participate in political broadcasting might be brought to an end.

The position was a very delicate one, and trouble was always threatening. In February 1931, the Party Whips were informed that a series of twelve informative talks on India was under consideration, and the series was broadcast from 10th April onwards with a vehement protest from Mr. Winston Churchill that he was not included among the speakers. The next protest came in September 1932 from Mr. Lansbury, the Leader of the Opposition and the Labour Party, who wrote to the Chairman of the Corporation complaining strongly that in a projected series of talks in which his colleague, Mr.

Arthur Greenwood, was included, there had been no preliminary approach to the Party Whips. A little later, he complained of the procedure adopted following the Ottawa Conference, when statements were broadcast by the two resigning Ministers and two Members of the Government without any opportunity to the Opposition being given. The Corporation pointed out that, in its arrangements, it had followed the procedure applicable in the House of Commons on the resignation of a Member of the Government.

On 18th October 1932, the Labour Party expressed profound dissatisfaction with the attitude of the British Broadcasting Corporation and "hostility to the idea of unofficial political broadcasts under the auspices of an unofficial Advisory Panel." This Panel was a small Parliamentary Committee of Members of both Houses set up at the invitation of the Corporation to advise it on political talks other than election talks. This had been done with the approval of the Prime Minister, but did not contain a representative of the Labour Party, which refused to nominate one on the grounds that only official machinery should be used. At a meeting on 14th November, the Chairman of the Corporation, the Right Hon. J.H. Whitley, explained

the Corporation's standpoint. The process of arranging a series of political talks through the Whips was cumbersome in ordinary times and impracticable under existing conditions, so that there had been no broadcast political discussions for a year. The Corporation also considered it was vital "that the Corporation should be freed from any suggestion of interference either by the Government or the Opposition in the discharge of its responsibilities, and that the ultimate responsibility for determining what subjects can best be dealt with, when, and by whom, must be taken by the Corporation itself."

This explanation was not considered to be acceptable, and at a Meeting of the National Joint Council (representing the T.U.C., the Labour Party and the Parliamentary Labour Party) assent was refused to the proposition that the final selection of speakers on political subjects closely affecting Party fortunes should be in the hands of the Corporation. The difference in principle between the Corporation and the Labour Party prevented any association of the Party with the Parliamentary Advisory Panel¹ set up by the Corporation, and this greatly diminished its value.

The danger of following the principle of the Labour

1. Mr. John Buchan.
Sir Ian Macpherson
Major Milner.

Lord Rankeillour.
Lord Gorell.

Party that only official machinery should be used in arranging political broadcasts was illustrated by the protests of three senior Privy Councillors, - Sir Austen Chamberlain, Mr. Winston Churchill and Mr. Lloyd George - who complained, in respect of a series of talks entitled "The Debate Continues" planned for Autumn 1933, against "an entirely new principle of discrimination in British public life, namely the elimination and silencing of any Members of Parliament who were not nominated by the Party Leaders or Party Whips." "Such a principle" they asserted "if applied in Parliament would reduce its Debates to mere representations of machine-controlled opinion, and would deny fair expression to independent and non-official views."¹

The Corporation, in its reply, denied that any new principle was either intended or involved, and that only limitations of space in the particular series had made it necessary to select speakers from the Government and official Opposition only.

The next important statement on policy arose out of a broadcast by Mr. Stanley Baldwin on his becoming Prime Minister in June 1935, following upon the resignation of Mr. Ramsay Macdonald. Sir John Reith stated "the Corporation

must retain the right to arrange a broadcast talk by the Prime Minister or another Minister on occasions of particular national interest without thereby incurring the obligation to provide facilities for reply by a Representative of H.M. Opposition (or Oppositions). Since, on such occasions, manuscripts are not required beforehand, the Corporation cannot decide until after the talk has been given whether or not a right of rejoinder is warranted. The Corporation points out that similar facilities would, in practice, always be given to the Government of the day and under the same conditions."

But before this, on 17th April 1935, the Ullswater Committee was appointed and the whole of the Corporation's activities came under its scrutiny. No less than eight paragraphs of the Report of the Committee, which was issued on 31st December 1935, were devoted to the subject of political broadcasting, and there was a reservation by Mr. Attlee on the subject. The Committee was unanimous in reporting that, on the whole, the Corporation had been successful in its policy of holding the scales even between the various political parties. They recommended, in contrast to the plea of the three Senior Privy Councillors,

that on the "major political issues of the day, there should be close co-operation and consultation between the British Broadcasting Corporation and the authorised spokesmen of the recognised political parties." They expressed the view, however, that the British Broadcasting Corporation must continue to be the judge of the amount of political broadcasting, and that they should allow adequate expression of minority views, however unpopular. Mr. Attlee's reservation which was chiefly taken up with a criticism of the broadcasting arrangements arising out of the economic crisis of 1931, emphasised the need for impartiality on the part of the British Broadcasting Corporation, and a careful regard for Parliamentary practice.

In their Observations published contemporaneously with the Ullswater Report, the Governors of the Corporation remarked that "the recommended consultation has been the invariable practice from the beginning of political broadcasts."

The dissatisfaction expressed in Mr. Attlee's reservation with the lack of opportunities afforded to Members of his Party was at least equalled by that of his opponents. Matters arising from the Ullswater Report were debated in

the House of Commons in three Debates, the first of which was held on 29th April 1936¹, when, although the subject of political broadcasting did not bulk very large, certain interesting points emerged. Mr. Lees-Smith and Mr. Ammon drew attention to the unsatisfactory nature, as they saw them, of the arrangements in 1931 to which Mr. Attlee had referred, and Mr. Ammon offered the opinion that, in the case of political broadcasts, the Corporation should not determine either the subject or the speaker, but that ~~their~~ duty should be concerned only with the allowance of time.

The New Charter and Licence issued on 1st January 1937 did not involve any changes in political and controversial matters, and during the years immediately preceding the outbreak of war, attempts were made by the Corporation to carry out the recommendations of the Ullswater Committee,² especially in regard to "co-operation and consultation with the authorised spokesmen of the recognised political Parties." On the advice of Captain Margesson, the Chief Whip, an approach was made to the Speaker through his Secretary to take the initiative in setting up a Committee. He declined unless requested to do so by the House of

1. H. of C. Vol. 311.Cols.955-1040.

2. C.M.D. 5091 of 1935.

Commons. In February 1938, the Postmaster General, Major Tryon, on being approached, was unable to make any alternative suggestion.

In the absence of official co-operation, the Corporation was in a serious difficulty in selecting representative speakers, and in dealing at the microphone with subjects actually under discussion in the House of Commons. Progress along the lines of inviting Members of Parliament to take part in a free discussion on party lines of a question at issue was slow, and it was not until 27th February 1938 that the Corporation was able to arrange the first of a series of monthly broadcasts by the parties on some political subject - either a Bill before Parliament or some issue of current affairs that might be topical at the moment. The first broadcast of the proposed series was on Old Age Pensions, and it was given a special advertisement¹.

The broadcast was not a success but, in spite of this, several debates followed along the stilted lines which had been agreed between the parties, of three fourteen-minute speeches. The Corporation was anxious for improvement, and when, in connection with a Debate on "An Emergency Tax on Wealth"

"Political Debates - 1. This is the first of a monthly series of free discussions for which the B.B.C. will place the microphone at the disposal of the three main political parties. They will select their own speakers and will choose the subject of the debate, which will be some matter of current political interest, a few days before the broadcast."

Mr. Attlee made some suggestions for better presentation, he was asked to submit them to the Party Whips. The Corporation also restated their view that a better procedure would be for each speaker to talk for five or ten minutes to start with, and that the rest of the period of three quarters of an hour should be devoted to informal discussion and argument with one of the speakers acting unobtrusively as Chairman. Mr. Attlee was unable to get support for his suggestions by the Whips of the other Parties, and they had, therefore, to be dropped.

Dissatisfaction with the procedure for political debates was general, and the fear that too close a reliance on Party machinery would stifle freedom of debate was raised again by Mr. Winston Churchill on 28th February 1939 in a letter which he wrote to the Director General pointing out that some provision should be made in the new series of political broadcasts for the expression of independent opinions by so called elder Statesmen who had held high office, but who were not likely to be chosen by the spokesmen of the Parties¹. He considered it indefensible on grounds of public policy that no public men not nominated by the Party Whips should be allowed to speak on the radio, and asked for the matter to be

1. H. of.C. Vol. 425. Col. 1128,

referred to the General Advisory Council with the suggestion for a Panel to be formed from which an independent speaker, not chosen by the Whips, should be selected in each month.

This suggestion, with others, was discussed by the General Advisory Council at its meeting on 24th May 1939. The Chairman of the Council, Lord Macmillan, in summing up, said it was desirable for the British Broadcasting Corporation to allow a considerable amount of time for political questions in the wider sense, and that the British Broadcasting Corporation should be ready to take a greater measure of responsibility upon itself in the arrangement of broadcast political speeches and debates, including the selection of political speakers. This was the situation when the outbreak of war put an end to experiments in political broadcasting.

Apart, however, from these balanced series, Ministers and Members of Parliament were invited to broadcast on a wide variety of political, semi-political and non-political subjects, excluding political propaganda on Party lines. The Opposition representatives were constantly vigilant and expressed their anxiety in Parliament about the alleged "unfair share of the microphone" accorded to Government

spokesmen, in particular, to the Prime Minister." In a Debate in the House of Commons on 27th March 1939, the Postmaster General vindicated the policy of the Corporation.¹ The outbreak of war ended party broadcasting, and, in June 1944, Mr. Horabin said in Parliament:- "In five years, there has been no real political controversy outside the House."² ~~This statement was not entirely true, as~~ A new element in broadcasting was ^{however,} introduced in 1944 with the straightforward controversial Debate in which the Corporation's responsibility almost ended with the choice of subjects³.

After the dissolution of the Coalition Government, Party controversy returned in full vigour, and a short time after the General Election of 1945, Mr. Quintin Hogg asked the Prime Minister what regulations were to govern broadcasts by Members of the Government on foreign and British networks. To this the Prime Minister, Mr. Attlee, replied that the general question of political broadcasts would require further study, but that the same rules with regard to Ministerial broadcasts as were effective during the Coalition Government would be applied.⁴ These rules were enunciated by Mr. Brendan Bracken,⁵ when Minister of

1. H.p.C. Vol. 345. Cols. 1842-1850.

2. " Vol. 401. Cols. 890-892.

3. For an interesting commentary on this see Debate of 16th July 1946 - Vol. 425. Cols. 1128-29.

4. H.ofC. Vol. 345. Col. 1706.

5. " Vol. 413. Col. 606.

Information, who stated that, as regards Ministers, the practice was for the Prime Minister to be consulted in all cases of political importance. As regards other Members of Parliament, the British Broadcasting Corporation was under no obligation to consult the Minister before issuing invitations¹. In the White Paper of July 1946, it was made clear that the Government expected the Corporation to take responsibility for maintaining an impartial balance between the political parties.² The Government thus departed from the earlier standpoint of the Labour Party that only official machinery, meaning the Party Whips, should be used in making arrangements for political broadcasts by Members of Parliament.

POLITICAL BROADCASTING at ELECTION TIME.

The first General Election at which political broadcasting was possible took place in May 1929, a few months after the ban on controversial broadcasts was lifted. The Corporation's policy was that the allocation of broadcasts was a matter for settlement amongst the parties with the Corporation merely supplying facilities. But the matter was not so easy. The Labour and Liberal Parties claimed equality with the Government, and the Government claimed

1. H. of C. Vol. 389. Cols. 157-8.

2. C.M.D. 6852 of 1946.

the right to reply to each Opposition broadcast. Eventually, it was decided, under protest from both the Liberal and Labour Parties, that the Government should be given four broadcasts before the Dissolution, and the Labour and Liberal Parties two each. The rota of pre-dissolution broadcasts was arranged so that for each Address on behalf of the Government, the Opposition had an opportunity for reply. For the period between the Dissolution and the General Election, six broadcasts were arranged, the first three given by women speakers, and, in this rota, the Government had the last word in each round of the three speakers from the Labour, Liberal and Conservative (Government) Parties. This was insisted upon by the Conservative Party, if their opponents were to be given four opportunities of expressing themselves against their two. The broadcasts were given at 9-15 p.m. and lasted for thirty minutes in the case of the men and twenty minutes in the case of the women.

The arrangements which obtained in the 1929 Elections could not be applied to the Election of October 1931 owing to the formation of the new National Government and the split in the Liberal Party. The Corporation again, in spite of its policy of remaining aloof, was compelled to take part in

the negotiations between the Parties for the allocation of broadcasts. It was finally agreed that the Election broadcasts should be ten in number, and should be allocated to six National Government Speakers (two Conservatives, two Labour and two Liberal) three Labour and one Liberal Speaker. On this occasion, summaries were given in the Corporation's News Bulletins of the manifestos of the Party Leaders and of the Trades Union Council, and on the eve of the Poll, an appeal was made to electors in both News Bulletins asking them to vote, the secrecy of the ballot was emphasised, and a summary of this appeal was broadcast early on Polling Day. This appeal to the electors was later the subject of grave criticism by Mr. Attlee on behalf of the Labour Party.¹

In preparation for the Elections fixed for the end of November 1935, the Corporation invited discussion with Captain Margesson, the Chief Whip. It was suggested once again that the Corporation's responsibility should be confined to making time available, and that the allocation of the time should be the responsibility of the various Parties with recourse to the Speaker in the event of failure to agree. It was considered doubtful by the Chief Whip if

1. Ullswater Report. C.M.D. 5091.

the Speaker would accept the responsibility, and so once again the Corporation was involved. The Government Whip suggested a rota of five broadcasts for the Government, four for the Official Opposition, and three by the Liberal Opposition, of which one should be given by Mr. Lloyd George. As regards any other minor Parties, it was suggested that they should be offered a shorter period at another time of day. These proposals were submitted to the Whips of the Labour and Liberal Parties.

The Labour Party through its spokesman, Mr. Attlee, Leader of the Opposition, expressed the view that a fairer allocation would be 5:5:2 as the Government and Labour Parties were the only contestants for power. He agreed to the suggestion in regard to minor Parties, provided they were actually running candidates.

Mr. Attlee also made three proposals, one of which was adopted later by the Ullswater Committee. These were:-

1. There should be a complete cessation of political broadcasting for the three days prior to the Poll, so as to avoid the possibility of an unfair advantage being taken of the final speech to be made on behalf of the Government.
2. That on the last night of the political broadcasting series, speeches should be made by the Representatives of the Opposition and of the Government, the latter naturally having the last word.

3. That precautions should be taken to ensure fairness:-

- (a) By a cessation of speeches and talks although not definitely political which might affect the minds of the electorate.
- (b) Careful scrutiny of News Bulletins.
- (c) The careful avoidance of "tendentiousness" such as "occurred at the last General Election when an Announcer urged the Electors to go to the Poll in terms which were part of a slogan used by the National Government Party.

The Whip of the Liberal Party wrote accepting the ratio proposed by Captain Margesson though he felt that the Liberals should have four opportunities, as one was to be taken up by Mr. Lloyd George.

The Corporation supported the proposals of the Chief Whip bearing in mind that, if extra opportunities were granted to the official Opposition or to the Liberals, the Government would at once have demanded extra opportunities in compensation.

As regards applications from minor Parties for broadcasting opportunities, the Corporation indicated that it would consider claims after Nomination Day, and that lesser periods of time might be allotted at another time of day to Parties qualifying by the minimum number of candidates. Mr. Attlee's proposal for two speeches on the last night of

political broadcasting was not considered practicable, but he was assured that there would be no other talks given with political implications during the election period, and that the News Bulletins would be carefully scrutinised.

Before the rota fixed for the election began, Mr. Lloyd George, writing from the Council of Action for Peace and Reconstruction, asked for opportunities to broadcast, as it was confidently anticipated that the Council's programme would be accepted by some hundreds of candidates of all Parties. In reply, the Corporation pointed out their proposals for treating minority groups, and mentioned that if Mr. Lloyd George broadcast, as he had an opportunity of doing, as a nominee of the Liberal Party, he would have an opportunity of giving prominence to the views of the Council. Viscount Snowden also wrote on behalf of the Council, and mentioned that Sir Herbert Samuel, on behalf of the Liberal Party, had offered him as well as Mr. Lloyd George the opportunity to broadcast. This he did not think was fair, as neither he nor Mr. Lloyd George spoke from the standpoint of the Official Liberal Party. The Corporation, in reply, adhered to the view that it could only give facilities to recognised Parties, and that the choice of Speakers was the

business of the Parties themselves. The Corporation also informed Viscount Snowden that the Chief Government Whip and Mr. Attlee objected strongly to the action of the Liberal Opposition, and considered it contrary to the agreement reached between the Parties.

The minority Parties which applied for permission to broadcast during the election period included the Communist, Co-Operative, Independent Conservative, Independent Labour, Scottish Nationalist and Social Credit Groups. Their requests for broadcasting were considered after Nomination Day, 4th November, and refused on the grounds that no Party was nominating as many as twenty candidates. There was grave criticism by the disappointed Parties that the qualifying member should have been fixed after the Nomination date.

The rota of twelve began and ended with a Government Speaker, and the broadcasts took place between 9.40 p.m. and 10 p.m. in the National Programme only, free from all control by the Corporation. Once again, the manifestoes of the Leaders of the Parties were given in summary form in the News Bulletins a day before polling, and the election speeches were not reported.

During the sequence of political speeches, and interest-
 :ing question arose from a request by Sir Samuel Hoare that
 he should broadcast a factual talk from Geneva on Saturday,
 2nd November, on the situation in Geneva. The matter was
 referred to the Whips of the Labour and Liberal Parties for
 their opinion, and they consented to the broadcast being
 given, on the understanding that it contained no Government
 propaganda direct or indirect. The broadcast was accord-
 :ingly given.

In February 1936, the Ullswater Committee, which made
 a special study of political broadcasting amongst other
 topics, made its Report. The recommendations concerning
 political broadcasting during a General Election are con-
 :tained in paragraphs 93-94.

93. For the conduct of political broadcasting during a
 General Election campaign, the B.B.C. should, we
 consider, first offer for election speeches such
 time as may seem appropriate. The allocation of
 this time between Government, the Official Opposit-
 :ion and other Parties should then be arranged by
 agreement between them, in default of which the
 Speaker of the House of Commons might perhaps be
 asked to make an arbitral decision.

94. The broadcaster, who has the last word during an
 electoral contest, is in a position of great
 advantage, because there can be no adequate reply to
 what he may say. In the fear that this advantage
 might be unfairly used in the production of a

surprise issue at the last moment, it has been suggested to us that all political broadcasting should cease for three days before the Poll. There is force in this suggestion; the General Election of 1935 has shown it to be practicable, and we recommend its adoption.

Mr. Attlee included a paragraph on broadcasting during a General Election in his Reservations to the Ullswater Report. He agreed with the recommendations of his colleagues for control, and recognised that, in the General Election of 1935, the practice recommended was carried out. He felt obliged, however, to draw attention to the circumstances of the 1931 Election which he considered unfair to his Party. He stressed the importance of impartiality and independence in members of the Corporation.

In December 1938, Mr. Attlee and Mr. Greenwood of the Labour Party, approached the Director General of the Corporation to discuss political broadcasting. They raised the question of arrangements for the next election which "All Parties realised exercised a very potent influence on the minds of electors." The Labour Party suggested that time should be allocated on a fifty-fifty basis between the Government and the Opposition, with the realisation that the Opposition might have to part with some of its 50% to other Opposition Parties with strong claims. After negotiations

between Captain Margesson, Mr. Attlee and Sir Archibald Sinclair, with the B.B.C. as intermediary, the following arrangements were agreed in April 1939:-

1. That the twelve times made available by the B.B.C. should be allocated as follows:- Government 5: Official Opposition (Labour) 5: Liberal Opposition 2.
2. The Government to speak first and last.
3. Three clear days (Sunday not counted as a day) between the last talk and Polling Day.
4. No other talks of a political nature, or with political implications, to be given during the election period.
5. The claims of minority Parties to be considered after Nomination Day - any Party with more than twenty candidates to be given shorter periods at less important hours.

It was further agreed that these talks should be broadcast in the National Programme only at 9-30 to 9-50 p.m. and that talks by Minority Parties, if any, should be broadcast at 6-30 p.m. for ten minutes.

During the war, several new factors of interest arose, amongst which was the existence of an appreciable number of members who no longer responded to a Party Whip. It was difficult, however, to decide on what should be the treatment of Independents without knowing the issues upon which the election would be fought.

The General Election of 1945 followed upon the breakdown of the National Government, and broadcasting arrangements were made on the basis of the Agreement of April 1939, subject to certain important modifications. It was agreed that, owing to the unusual circumstances, the period for the political broadcasts should cover the thirty eight days between the announcement of Dissolution and Polling Day, instead of merely the period between Dissolution and Polling Day, as arranged in 1939. It was also agreed, while maintaining the ratio between the parties on the 1939 basis, to make the number of broadcasts as follows:-

Government	10
Official Opposition (Labour)	10
Liberal Opposition	<u>4</u>
	<u>24</u>

The Director General of the British Broadcasting Corporation, Mr. Haley, proposed at a meeting at Broadcasting House on 13th April, of representatives of the three main Parties, that the number of broadcasts should not exceed twenty, but, on 30th May, the Corporation was informed that the Parties had agreed among themselves, contrary to what was agreed in 1939, that there should be twenty four broadcasts to run for thirty minutes each. On grounds of good

broadcasting presentation, the Corporation protested against the proposed duration of the speeches, and eventually it was settled that only ten of the broadcasts should be thirty minutes in length, the ratio - Government 4, Labour 4, and Liberal 2.

Arrangements were also made for all the broadcasts, both of the main Parties and the minority Parties, to be broadcast in the Overseas Services, so that British Forces serving abroad in all parts of the world could hear them at their peak listening times.

As regards the minority Parties, it was made clear in the Press Notice of 25th May, issued by the three main Parties, that the qualification for a broadcast was that the Party in question must have not less than twenty candidates in the field on Nomination Day (25th June). Only two minority Parties were found to have qualified, namely the Communist Party and the Commonwealth Party, each of whom was given one election broadcast of ten minutes' duration from 6-20 to 6-30 p.m. on the 28th and 29th of June respectively.

The experience of the 1945 Election showed that the broadcasting of twenty four speeches within twenty six days

surfeited the public appetite for election oratory, particularly as many of the Speakers failed lamentably as broadcasters from lack of experience, inexpert production, and other reasons.

In February 1946, the Corporation made an ⁱⁿnovation by broadcasting election speeches in connection with the elections to the London County Council. Two speeches were broadcast on the London Regional Wave Lengths only on behalf of the two main parties concerned, The Municipal Reform and the Labour Party on successive evenings from 9-15 p.m. to 9-30 p.m. This was considered by the Corporation to be as much as their programmes could carry, as the elections were of direct concern only to London listeners. Some disappointment was expressed that it was not possible to allocate time to other minority Parties, and a question was asked in Parliament, but the Prime Minister, Mr. Attlee, approved of the procedure adopted by the Corporation¹.

In the White Paper on Broadcasting of July 1946, it was stated that "It must be the responsibility of the Corporation to maintain an impartial balance between the political parties and, in exercising this responsibility, the Corporation will, no doubt, act in concert with the

1. H. of C. Vol. 419. Cols. 2107-8.

representatives of the Political Parties, as was done during the pre-election period in 1945 when the Corporation provided facilities to nominated spokesmen of the main political Parties and studiously avoided, in its own programmes, any expressions of political opinion¹.

BROADCASTING PARLIAMENTARY REPORTS.

Since 1929, a weekly account of Parliamentary Proceedings has been broadcast, first of all under the title of "The Week in Parliament" and from February 1931 under the title of "The Week in Westminster". The series which was first broadcast by Women Members of Parliament for housewives on Saturday mornings soon gained importance, and by the end of 1937 was changed to an early evening period when a much greater audience was available.

During the years before the war, the Corporation always maintained its independence in the choice of Speakers who were always Members of Parliament. The general policy was to avoid choosing Front-Benchers, and it was not considered necessary to consult the Party Whips. Speakers were chosen from the four principal Parties in a definite rotation calculated on their Parties' Parliamentary strength. The rota was designed to give each member three or four

broadcasts before he was replaced, as experience had shown that Members improved as broadcasters with practice.

With the outbreak of war, the choice of Speaker became subject to the approval of the Minister of Information, but the Minister (Mr. Brendan Bracken) made it clear on several occasions that he did not wish to interfere in any way with any of the arrangements.¹

The question of the independence of the Corporation was brought into issue in August 1942 by Mr. William Whiteley, Chief Labour Whip and Parliamentary Secretary to the Treasury, who put forward a suggestion for a revision of the choice of Speakers which involved the submission of a List of Members recommended by their Party to the Whips Office. The Corporation took the view that existing practice was sound and in accordance with the general recommendations of the Ullswater Committee. The Minister of Information supported the Corporation in its attitude, and the matter was not pressed further.

In 1942, the Minister did, however, express a preference for Parliamentary journalists rather than Members of Parliament which he repeated subsequently in Parliament².

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| 1. | H. of C. | Vol. 387 | Col. 166 |
| | | Vol. 391 | Col. 2109. |
| | | Vol. 401 | Col. 922. |

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|----|----------|-----------|-----------|
| 2. | H. of C. | Vol. 401. | Col. 922. |
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The Corporation expressed willingness to experiment with Speakers, such as Lobby Correspondents, but felt, in view of the success of the series over the last nine years, that the use of Members of Parliament should not be abandoned.

Apart from the "Week in Westminster", another method of reporting the Proceedings in Parliament was by a Report in the Corporation's News Bulletins. The Ullswater Committee in paragraph 91 of their Report observed as follows:- "Any direct broadcasting of Parliamentary Proceedings we regard as impracticable, but we consider that the B.B.C. has done well in giving space to those proceedings in its News Bulletins. The experiment of sending a reporter to a Parliamentary Debate in order that he may broadcast an account of it seems to us excellent in intention, though there are difficulties which may have not yet been overcome. The task is one demanding skill and experience on the part of the reporter who should endeavour to give an objective account rather than a personal impression, taking particular care to avoid any distortion due to individual bias, or to the desire for descriptive effect. If the experiment is to be pursued, the reporter should be given all necessary Parliamentary facilities, especially as regards admission

and note taking."

Mr. Attlee made a reservation in this paragraph which was entirely negative in character. He stated:- "I am not in agreement with the practice of sending a reporter to Parliamentary Debates in order that he may, on the same evening, broadcast an account. I do not believe that it is possible to find a person who can at the same time give a vivid personal impression and free his mind from political bias. The experiment in this direction made by the B.B.C. does, I think, bear out this point of view, and I am of opinion that it should not be repeated."

The Corporation did not accept the negative view of Mr. Attlee, but it depended on the News Agencies for the most part rather than on separate reports as the chief source of current information on Parliamentary Proceedings until the 1945. appointment on 1st October/ of Mr. E.R. Thompson as the Corporation's Parliamentary Correspondent. The programme "To-day in Parliament" was introduced as a daily programme (when the House is in session) on 9th October 1945, and was intended to be an objective and factual account of the day's Proceedings in Parliament, including the House of Lords, and was presented as a news report broadcast every

evening at 10-45 p.m. in the Home Service. The programme "To-day in Parliament" was run in parallel with the programme "The Week in Westminster" which has continued to be broadcast weekly from its inception without a break. The two programmes do not conflict in any way, but are complementary. The one provides factual daily reports and compares with the Parliamentary Report in the daily Press, while "The Week in Westminster" might be compared to the weekly summary in "Punch" or some other weekly journal of repute.

Members of Parliament showed, and continue to show, a good deal of interest and sensitivity in regard to these Reports, and constantly emphasised the need for balance and objectivity¹.

In the White Paper of July 1946, it was stated:- "The Government attach great importance to the part which broadcasting can play in keeping the public informed of Parliamentary Proceedings, but they are opposed to the broadcasting of actual Debates since they do not consider that the Proceedings of Parliament lend themselves to such treatment. Daily reports are already being given in the Corporation's programmes in addition to weekly talks by Members, and the

1. H. of C.	Vol. 404.	Cols. 788.	2382.
	Vol. 406.	Cols. 1258.	1765.
	Vol. 408.	Col. 782.	
	Vol. 414.	Col. 195.	
	Vol. 417.	Cols. 221-2.	
	Vol. 419.	Cols. 1753-4.	

Government have now laid upon the Corporation an obligation to continue to broadcast an adequate and impartial daily account by professional reporters of the Proceedings in both Houses of Parliament."

POLITICAL BROADCASTING - GENERALLY.

The Corporation from the time of the removal of the ban on controversial broadcasting organised series of Talks on subjects of political interest in which the Speakers were seldom Members of Parliament, but were chosen for their expert knowledge and broadcasting ability. Such series were those entitled "Points of View" which was broadcast in the autumn of 1929; the series on India, broadcast in February 1931; the series on Russia in 1931, and "The Citizen and his Government" planned for the April-June quarter of 1936. The last series included Talks by Sir Oswald Moseley and Mr. Harry Pollitt on Fascism and Communism respectively, and were cancelled by the Corporation "in view of the effect which the proposed talks might have on an international situation already aggravated by recent developments."

Mr. Parker, in the Debate on the Ullswater Committee's Report of 29th April 1936¹ mentioned in detail the reasons for the cancellation which he ascribed to the objections of

the Foreign Office. He did not think that the Foreign Office had any right to block talks which were not on Foreign Policy, and, in the case of the cancelled talks, guarantees had been given that Foreign Policy would not be introduced into the talks. The cancellation caused much disquiet to the Corporation's Adult Advisory Committee which passed a Resolution expressing grave concern at the cancellation of the proposed talks, and the hope that this action did not represent any change of policy in the direction of narrowing the field over which balanced controversy might be permitted. They also requested that their Resolution might be reported to the General Advisory Council. The General Advisory Council met on 29th June 1936 and considered the Resolution. The Governors of the Corporation, in their reply to the Resolution, stated "that they have been, and still are, unanimously of the opinion that, in view of the responsibility vested in them by the State, subject to adequate safeguards being taken, controversial series of Talks should take a prominent position in the programmes. The Council, after hearing a statement by the Chairman of the Corporation, was satisfied that the decision to cancel the talks did not represent any change of policy on the

part of the Corporation. They were very apprehensive, however, of the danger to freedom of broadcast speech by Government instruction. The power of the Government to intervene was recognised, but it was felt that the Corporation would not be justified in accepting intervention unless satisfied that the course advised by the Government was in the public interest or, alternatively, unless the Government were prepared to accept open responsibility for enforcing their view. It is interesting to read this opinion in the light of the terms of the new Licence from the Postmaster General, which came into operation on 1st January 1937 which showed that the Government was not prepared to accept open responsibility in all cases where it intervened to stop a broadcast being given, but only in such cases as it might decide. This was, of course, of the utmost constitutional importance, and a serious restriction on the independence of the Corporation.

The question of political broadcasting received further
¹⁹³⁶
 attention in the Debate on 6th July¹ when Mr. Attlee complained of the lack of any mention of political broadcasting in the Government White Paper of June 1936, and said that what was wanted was freedom of controversy and equality for expression of opinion on politics, and other matters of

controversy. He was joined in his criticism by Miss Lloyd George who charged the Corporation with being "scared of controversy" and suggested that the Corporation should adopt the newspaper principle of "the Editor does not necessarily agree" so far as certain talks were concerned.

Early in 1937, the Corporation formed a Talks Advisory Committee¹ to advise the Corporation on major matters of Talks policy, to make suggestions for Talks, to consider and comment on the Corporation's proposals, and to act as consultants in planning particular series. At the second meeting of the Committee on 1st July 1937, a discussion was initiated by Miss Megan Lloyd George, M.P., and the following Resolution was proposed by her and carried unanimously:- "That this Committee desires to re-affirm its view previously expressed as to the importance of the discussion before the microphone by whatever method the B.B.C. finds practicable of live political issues which are actually under consideration."

There was no attempt to define what were live political issues, and there were difficulties, both in the selection of Speakers and the choice of subjects. There appeared to be two alternative methods of dealing with live political issues.

1. H.C. Vol. 400. Col. 747.

Mr. I. Albery, Gravesend.

Miss Megan Lloyd George. Anglessy.

Mr. A.P. Herbert. Oxford University.

Mr. Isaacs. N. Southwark.

(a). The method advocated by Miss Lloyd George¹ in which Members of Parliament would be invited to take part in a free discussion on Party lines of a question at issue; the Corporation would not attempt to influence the Speakers in any way as to their method of treatment of the question, and would have no responsibility in regard to it.

(b). The method hitherto followed by the Corporation of controversial discussion between recognised Authorities, not necessarily M.P.'s, who were asked to refrain from rhetorical declamation and personal invective, to confine themselves strictly to the points at issue, and, generally, to give a reasoned and detailed statement of both sides of the question, so as to supply the listening public with adequate material for forming its own opinion. The Corporation in this form of discussion accepted a "publisher's" responsibility for an adequate, impartial, and authoritative presentation of the different sides of the question.

The category (a) discussions fall within the scope of the political broadcasting by Members of Parliament for Party purposes, and are discussed under that heading. An increase in category (b) discussion was comparatively easy, and a number of series on topical subjects were broadcast up

1. Debate in the House of Commons. Vol. 314.
Cols. 935 - 942.

to the outbreak of war.

As a result of the transfer of powers from the Postmaster General to the Minister of Information, political broadcasts were handled according to instructions drawn up by the Director General of the Ministry of Information.

The Corporation introduced security censorship and a close scrutiny on policy, as it was necessary for the Corporation to avoid broadcasting anything which would prejudice the war effort or subjects inappropriate to the occasion, or the state of public feeling, which was subject to rapid changes. As an indication of Government policy, the Prime Minister stated in the House of Commons on 20th March 1941:- "It is no part of the policy of H.M. Government to accord the special facilities of the microphone to persons whose words and actions are calculated to hamper the nation in its struggle for life."¹

As regards the influence of the Ministry of Information on the policy of the Corporation, the Minister of Information, in reply to a Parliamentary Question on 18th November 1942, stated "the Board of Governors recognise that it is necessary in wartime for the Government to control the policy of the Corporation in matters affecting the war

effort. I do not think that this measure of Government control has prevented the B.B.C. from adequately reflecting current opinion in this country.¹

Earlier, the Prime Minister, Mr. Churchill, had also decided that no Ministerial broadcasts, other than by Members of the War Cabinet, should be made without his approval of the occasion and the Minister of Information's report to him on the proposed matter.²

All these factors tended to restrict both the scope and volume of broadcast discussions as compared with pre-war days. Additional factors making for a restricted output were the reduction in the amount of broadcasting time available and the pre-occupation of many effective Speakers with special duties connected with the war effort.

By the summer of 1944 when a favourable end of the war with Germany appeared to be in sight, public interest began to grow in post-war problems and the issues at the next General Election. It was, therefore, decided by the Corporation to widen the scope of discussion on controversial issues, and one of the groups of subjects decided upon was "Those which would be better covered by an informative discussion." There was no essential difference between the

1. H. of C. Vol. 384. Col. 331.

2. H. of C. Vol. 389. Cols. 157 - 158.

"informative" type of discussion and the old category (b) type to which reference has already been made, and such Talks are now given at fairly frequent intervals.

In the White Paper of July 1946, it was stated that the "Government do not think it desirable to attempt to reduce to written rules the principles which should govern the Corporation in regard to political broadcasting." In the Debate on the White Paper of 16th July 1946, there were some interesting comments by Mr. Brendan Bracken and Lady Megan Lloyd George. Mr. Bracken expressed the view that the main purpose of the British Broadcasting Corporation was to provide a very lively forum where there could be the freest of argument from all sorts of persons in the community with strong views, and that until recently the Governors of the Corporation had taken the comfortable attitude of avoiding controversy.¹ Lady Megan doubted if any lively forum was possible without some definite ruling from the Government. Otherwise, she felt that the onus of impartiality was unfair to the Corporation, and must lead to incredible dullness in the programmes broadcast.

1. H. of C. Vol. 425. Col. 1108.
Vol. 425. Cols. 1120-1122.

CHAPTER FOUR.THE CORPORATION IN THE IMPERIAL and
INTERNATIONAL SPHERE.

Empire and Foreign Broadcasting. The Corporation's part as a Member of International Broadcasting Union, and as an expert on International Committees, Technical, Political and Legal.

BROADCASTING to the EMPIRE & OVERSEAS.

In the First Charter of the Corporation, there was no mention of the Empire Service as it was not until the end of 1927 that the Corporation established a short wave transmitting station at Chelmsford, by arrangement with the Marconi Company, for the purpose of experimental broadcasting to the Empire.

As these transmissions stimulated considerable interest in the Dominions and Colonies, the Corporation submitted to the Colonial Conference of 1929 and the Imperial Conference of 1930 a scheme for the establishment of a regular Empire Service. The scheme depended on financial support, and it was anticipated that, if there

were a demand from the Dominions and Colonies for such a service, the Home Government would be disposed to make special arrangements with the Corporation for its finance. Both Conferences were, in fact, anxious to see a proper service instituted, but, notwithstanding the importance of it and the interest which it aroused, efforts to secure some part of the Treasury proportion of the Licence revenue for this purpose were unsuccessful. Nothing could be expected from overseas broadcasting organisations, and although Colonial Governments were sympathetic to the idea of remitting a portion of the Licence fees paid by local licensees (where any licence system existed) so far only two Colonies have made such a contribution, and these ^{were} ~~are~~ of a purely token character. Dominion Governments were unable to assist, as they were fully stretched in developing their own domestic services. The Corporation has, therefore, financed the whole service from its ordinary revenue, and even if contributions had been forthcoming from all the Colonies, the total would have been almost negligible compared with the expenditure involved.

Special transmitters were erected at Daventry, and in December 1932, a regular service began. The total

hours of transmission were extended to meet the increasing demand from listeners overseas, and in order to provide an adequate daily programme at a convenient time for every part of the Empire. The importance of the Empire service was fully appreciated by the Colonial Office, and by the different Secretaries of State, Sir Philip Cunliffe Lister and Mr. Malcolm Macdonald, who showed great anxiety to secure the widest possible dissemination of the Corporation's programmes in Colonial Territories, particularly as many foreign countries were conducting a heavily subsidised short-wave service with transmissions specially directed to, and framed for, different parts of the Empire, and in the appropriate languages.

The Corporation in its submission to the Ullswater Committee requested that express authority should be given for the maintenance and development of the Empire service, and that the very considerable financial implications should be recognised.

The Ullswater Committee fully endorsed the submissions of the Corporation¹. They specifically recommended that the Empire Service should be expressly authorised in the new Charter, and that the additional

1. C.M.D. 5091 of 1936.

funds for its development should be provided by the Corporation from its increased share of Licence receipts.

They also expressed the view that, in the interests of British prestige and influence in World affairs, the appropriate use of languages, other than English, should be encouraged. In the White Paper on the Report of the Ullswater Committee of June 1936, the Government accepted these recommendations,¹ and in the new Charter of 1st January 1937, one of the objects of the Corporation was stated to be to develop the broadcasting service on terms to be agreed with the Postmaster General for the benefit of the Dominions and Colonies overseas².

The Empire Service of pre-war days became a nucleus around which the Corporation's Overseas Service, with its many divisions in foreign languages, grew. Although the Ullswater Committee had recommended that broadcasts in languages other than English should be encouraged in the interests of British prestige and influence, no active steps were taken until the end of 1937. On November 1st of that year, the Chancellor of the Exchequer, Sir John Simon, announced that he had asked the Corporation to provide broadcast news services to the Near East in Arabic

1. C.M.D. 5207 of 1936.
2. C.M.D. 5329 of 1936.

and to South and Central America in Spanish and Portuguese. The Arabic Service was started on January 3rd 1938 and the Spanish and Portuguese transmissions on March 15th 1938. At the height of the international crisis, news bulletins were broadcast for the first time on September 27th 1938 in French, German and Italian. In June 1938, the Latin-American Service was enlarged by the addition of daily news bulletins in Spanish and Portuguese designed for reception in the Peninsula as distinct from Latin-America. These bulletins were later brought within the European Service which, in 1940, became separated off as a service apart on account of its special military importance, and will be separately considered. In July 1939, the service to Latin America was extended, and just before the war, a service in Africaans was begun.

At the outbreak of the war, the Empire Service became a world service transmitted in English at convenient listening hours according to local time to enable listeners in all parts of the Globe to hear frequent news bulletins and talks giving the British point of view on current events. Later, to meet the requirements of British and Allied troops overseas for news and entertain-

ment, a General Overseas Service and General Forces Programme were introduced and broadcast throughout the entire twenty-four hours of the day. In the shaping of all these programmes, the Corporation had the assistance of expert staffs of sister Broadcasting Corporations in Canada, Australia, South Africa, India and elsewhere. One proof of the acceptability of these specialised programmes was the frequency with which they were rebroadcast by local stations in the Empire, and in order to permit of this, special contractual terms with authors, artists and the suppliers of news had to be made by the Corporation.

News bulletins broadcast by the Corporation were regularly taken by the Stations of the Australian Broadcasting Commission, the Canadian Broadcasting Commission, and All-India Broadcasting Organisation, the South Africa Broadcasting Corporation and Local Relay Exchanges in Barbados, Gold Coast, Malta, Nigeria and Sierra Leone. In the United States of America, news bulletins were made available to their listeners by the Columbia Broadcasting System, and over 130 independent Stations rebroadcast items from Empire programmes¹.

1. H. of C. Vol. 377. Col. 1693.

While the war was still on, the British Broadcasting Corporation convened the first Commonwealth Broadcasting Conference which met in Broadcasting House on 15th February 1945. Representatives were present from the National Organisations of Canada, Australia, New Zealand, South Africa and India. At the Conference, discussions were held on such subjects as Exchange of News and Programmes, the exchange of Staff, Copyright and Artists' Right, Standards in Broadcasting, and relations with other Broadcasting Organisations.

The Conference had the approval of the Government which, in the White Paper¹, stressed the value of co-operation with the Dominions, India and the Colonies, and encouraged the widest possible dissemination of programmes by broadcasting, local relay exchanges, and by the export of programmes in the form of scripts and recorded material. The Government also informed the Corporation of their approval of the practice of exchanging staff with the Dominions and the employment of staff with a background of Dominion experience. In order to stimulate reciprocal arrangements with the Dominion Broadcasting Authorities, the Government expressed the hope that the Dominions would

1. C.M.D. 6852 of 1946,

be willing to develop more programmes adapted for audiences in the United Kingdom.

OVERSEAS SERVICE (excluding EMPIRE SERVICE).

EUROPEAN SERVICE.

Until the liberation of Europe, the most important part of the Overseas Service was that directed to European countries, particularly those in enemy occupation. It is that part of the service which it is proposed to examine in some detail, particularly in its relationship to the Government which was altogether special. At the time of Munich, both the Ministry of Information and the Department E.H. (so called after Electra House where it was accommodated) were called into being as shadow departments. The Department E.H. was to be responsible for propaganda to enemy countries and propaganda to all other countries was to be under the Ministry of Information. Both Departments emerged on the outbreak of war, and Department E.H. was charged with the policy direction of the Corporation's services to enemy countries and had close relations with the Overseas Division of the Corporation which appointed liaison officers to maintain

daily contact with it. With the German invasions of April 1940 and subsequently, "enemy countries" became "enemy and occupied countries", so that Denmark, Norway, Holland, Belgium, France and other countries were transferred rapidly from the Ministry of Information to Department E.H. until only Sweden, Switzerland, Spain and Portugal remained with the Ministry.

During this stage, the Ministerial situation was very confused, and Department E.H. was formed into a branch of a secret department under the Minister of Economic Warfare. This left three organisations, Department E.H. the Ministry of Economic Warfare and the Ministry of Information responsible for the general direction of propaganda to Europe, and in order to create a better organisation, the Political Warfare Executive was created in August 1941 by the Minister of Information with the approval of the Prime Minister and the encouragement of the Foreign Secretary¹, ~~and~~ Department E.H. was then ~~ex~~ distinguished. The Political Warfare Executive consisted originally of the Foreign Secretary, the Minister of Information and the Minister of Economic Warfare. The Foreign Secretary and the Minister of Economic Warfare

who later withdrew, were concerned with policy while the Minister of Information exercised executive responsibility. It was intended that the Political Warfare Executive should work as a unity, but with responsibility to the Ministers jointly. Gradually, as a result of the Foreign Secretary's responsibility for policy, the Political Warfare Executive became identified with the Political Intelligence Department of the Foreign Office, and the two names were used more or less synonymously.

While this re-organisation was proceeding and to some extent as a result of the competing interests that precipitated it, the Corporation enjoyed a remarkable degree of independence, but the emergence of the new organisation marked also an increase in the control of the European Services of the Corporation. This had been begun in February 1941 when the Minister of Information (Mr. Duff Cooper) announced the appointment of Mr. Ivone Kirkpatrick of the Foreign Office as Adviser to the Corporation on foreign policy.¹ Later, in August 1941, Mr. Kirkpatrick was made the Political Warfare Executive Manager in the British Broadcasting Corporation, and later still, in October of the same year, Controller of the

1. H. of L. Vol. 374. Col., 1919.

Section of the Overseas Division dealing with enemy and enemy occupied countries. This arrangement appears to have been intended to reconcile Ministerial supervision with the nominal independence of the Corporation. But, in spite of the difficult constitutional position de jure, including statements in Parliament by the Minister of Information that the European News Service was under the direct control of the Government "and that the political policy of these special services that are directed to enemy or enemy occupied territories is a matter for H.M. Government", ¹ The Corporation enjoyed a considerable measure of freedom. This was assisted by three things. Mr. Kirkpatrick, as Controller of the European Division in the Corporation, developed independence of outlook as a result of the influence of his staff of expert broadcasters; the Ministry of Information adopted the equivocal attitude of asserting the absolute Government responsibility for the content of the European Service, and of refusing, on inconvenient occasions, to accept responsibility for everything said on the European Service.²

and Parliamentary control was greatly reduced by the refusal of the Government to allow even Members of Parliament to

1. H. of C. Vol. 406. Col. 1990.

2. H. of C. Vol. 377. Cols. 707-8.

H. of C. Vol. 392. Cols. 8902. 1392.

see European scripts as a whole until late in 1944 - a refusal which carried with it immunity from informed criticisms¹.

In June 1944, prior to the invasion of North Africa, the Psychological Warfare Branch of the Allied Forces Headquarters, an Anglo-American Agency, was set up and was maintained until the end of the war as the chief propaganda agency in the Mediterranean area. About the same time, another Anglo-American Agency, the Political Warfare Department of Supreme Headquarters of Allied Expeditionary Force was set up and operated² parallel to the Psychological Warfare Branch. The Corporation maintained a close contact with both these Agencies. Finally, there was the Office of War Information, the American counterpart of the Ministry of Information and the Political Intelligence Department combined. The formal relationship was between the Office of War Information on the American and the Ministry of Information and the Political Intelligence Department on the British side, but, in practice, there was a good deal of direct contact between the Office of War Information and the Corporation, particularly in regard to the American Broadcasts to Europe which were

1. H. of C. Vols. 373. Cols. 873-4.
370. Cols. 2086. 2754.
381. Col. 669
2. Vol. 410. Cols. 2451-3.

carried by the Corporation's transmitters. In the last stages of the war in Europe, the Americans operated their own radio network from London, named the American Broadcasting Station in Europe. (A.B.S.I.E.)

After the liberation of France and Belgium, early in 1945, the Corporation asserted its claim to independence in broadcasting to countries which were no longer enemy countries or enemy occupied. The Corporation also persuaded the Government to accept the transfer of the use of wave lengths from the European to the Home Service, and this was arranged so as to permit of the introduction of the Light Programme in July 1945. The use of another wave length was re-allocated to the Belgian Authorities. This meant a serious reduction in the effectiveness of the Corporation's services to Europe. When the proposed reduction was announced on 16th May 1945 in Parliament by the Minister of Information (Mr. Brendan Bracken) it provoked some apprehension amongst members who pointed out the value of the European Service, and the fact that it was in process of disintegration. But the Minister was unmoved, and pointed out that "the European Service of the British Broadcasting Corporation was a Service established

by His Majesty's Government and by the Ministry of Information and not by the Governors of the Corporation."¹ The disquiet among Members continued so that a Debate on Foreign Broadcast Services was initiated on a motion for adjournment. Mr. Thurtle, the Parliamentary Secretary to the Ministry of Information, again stated the official view². He pointed out that it was unreasonable to plead for a continuation of the broadcast services after the liberation of enemy occupied Europe, and referred to the technical difficulty arising from lack of wave lengths.³ No long wave length would be available for broadcasting to Europe; short wave lengths were unsatisfactory, and most of those used by the British Broadcasting Corporation must be given up. Medium waves would only cover Europe with the help of a relay station in Europe.

The powerful plea put forward by Members of Parliament for a continuation of a strong European Broadcasting Service found an echo in the "Times" of 6th September 1945 which published a centre page article by a Special Correspondent who, recognising that the Corporation's main concern must be the three Home Services, advocated the setting up of a new organisation occupying a "semi-detached" position

1. H. of C. Vol. 410. Cols. 2451-3.
2. H. of C. Vol. 410. Col. 2812.
3. H. of C. Vol. 410. Col. 2340.

between the Secretary of State for Foreign Affairs and the Corporation which would be financed by the Treasury. The Foreign Office was proposed as the controlling authority with a Chief Executive of the status of an Under Secretary appointed by the Government. The Corporation would be required to lease technical facilities and its name to the transmissions to Europe and in respect of these facilities, the Chief Executive would be responsible to the Director General and the Governors of the Corporation. The "Times" Correspondent faced up to the difficulty of under what banner the transmissions should go out and realised the importance, particularly in peace time, of the Corporation not being identified with the official direction of these foreign broadcasts. He proposed to meet the difficulty by drawing a clear and publicized distinction between broadcasts by the Corporation and official broadcasts under the proposed new organisation. It was, however, pointed out by a Mr. R.J. O'Connell, in a letter to the "Times" of September 19th, that it would be highly dangerous if the policy of all Overseas Broadcasts, whether to Europe or elsewhere, were not co-ordinated and closely linked with the Home News Services. He, therefore,

proposed an amalgamated service under the title, British Overseas Broadcasts, in charge of an Under Secretary responsible not only to the Foreign Secretary but also to the Secretary for the Dominions. In the interests of smooth working, he did not feel that the new organisation could be responsible to the Governors of the Corporation.

N.P. There was another influence working in favour of the continuation of a strong European Service, and that was the Anti-British propaganda broadcast by Russia to which it was felt that there must be some Counter. On 19th March 1946, Mr. Burke, the Assistant Postmaster General, announced that the Corporation was making preparations to add Russian language broadcasts to its existing programmes before the end of the month. He explained, however, that "the British Broadcasting Corporation does not attempt to counter individual foreign broadcasts, but its European Service is designed to provide listeners on the Continent with an accurate picture of events."¹

An indication of the policy to be followed by the Government was given by the Foreign Secretary, Mr. Bevin, in answer to a Parliamentary Question on 22nd May when he stated:- "The Foreign Office is not going to establish a

censorship of the British Broadcasting Corporation, but I do expect the British Broadcasting Corporation on matters of general policy, for which His Majesty's Government are responsible, to have regard to that policy."¹

In the White Paper of July 1946², the Government declared their future intentions in regard to the European Service. They stated "there are clear indications, at present, that other Powers intend to continue to use the broadcasting medium to put their point of view before an European audience, and we cannot afford to let the British viewpoint go by default. To continue the European Service effectively requires the use of at least two medium wave lengths on high power, in addition to short wave lengths. The Government consider it essential that out of the medium wave lengths available to this country, two should be set aside for this purpose." The technical situation was, therefore, to be restored to that prior to July 1945 at the expense of the Home Services. The matter was arranged by the amalgamation of the West-Midland Regions into a new Southern Region.³

The Government also touched on the vital question of the relationship between the Corporation and the Govern-

1. 22:5:46. Cols. 312-3.

2. C.M.D. 6852 of 1936.

3. By a decision announced from the office of the Lord President of the Council on 16th August 1946 this project was dropped.

ment Departments regarding the operation of the Service. It was evident that a notable constitutional advance had been achieved by the Corporation, as it was stated in the White Paper that "The Government intend that the Corporation should 'remain' independent in the preparation of programmes for Overseas audiences.^X But the Government's interest and the national interest are not necessarily identical, and the point of the relationship between the Corporation and the Government was debated at some length in Parliament on 16th July 1945¹. The Lord President of the Council, Mr. Herbert Morrison, stated how it was proposed to reconcile the needs of foreign policy with the independence of the British Broadcasting Corporation in the administration of the foreign services. He said:- "Clearly, it would be unthinkable for Broadcasting House to be broadcasting to Europe at the taxpayers' expense, doctrines hopelessly at variance with the foreign policy of His Majesty's Government. But, for reasons which I

X. This statement is to be contrasted with the Statement by the Prime Minister as late as 7:3:46 "Any matter of propaganda or anything of that kind with regard to foreign countries is a matter for the Foreign Office. The B.B.C. themselves are not responsible for a policy in that." - H. of C. Vol. 420. Col. 525.

1. H. of C. Vol. 425. Cols. 1089-1090.

hope will commend themselves to the House, it appeared to the Government to be equally undesirable that the Foreign Office should themselves become responsible for the Foreign Service." He went on to say that an arrangement had been reached with the Corporation under which it would accept the guidance of the Foreign Office on the nature and scope of its foreign language services, and there would be a very close liaison between the two of them, so that each side might at all times see clearly what was in the other's mind and draw freely upon the information which the other possessed. But once the general character and scope of a Service has been laid down, the British Broadcasting Corporation would have complete discretion as to the content of the programmes themselves. He also recognised the job of a broadcaster as a full-time one with a special expertise. The statement of the Lord President was a most valuable landmark in the constitutional history of broadcasting, but it fell far short of a clear guide or charter of liberties, and left it to the parties to evolve a policy. The weakness in the situation was recognised by more than one member who spoke in the Debate, and the

Minister himself described it as a compromise which might lead to regrettable incidents.

SERVICES OTHER THAN TO THE EMPIRE OR EUROPE.

It is only intended to say a general word in regard to these services, as they did not raise any points of comparable constitutional interest to the other Services which have been discussed. In the White Paper of July 1946¹, the Government considered that the Corporation should have the same full responsibilities and duties for the Overseas Services as are set out in its Charter for the other Services which included the Home and Empire Services. They also expressed the intention that the Corporation while remaining independent should obtain from the Government Departments concerned such information about conditions in those countries and the policies of His Majesty's Government towards them as would permit the planning of its programmes in the national interest. These statements merely confirmed the practice of consultation which had grown up².

THE CORPORATION AS AN INSTITUTION IN THE
INTERNATIONAL SPHERE.

Broadcasting by its very nature has no frontiers so

1. C.M.D. 6852 of 1936.
2. H. of C. Vol. 404. Vol. 1343.

that both technically and politically it was early realised that it would require international regulation. Technical regulation was the first necessity to become apparent, and, in April 1924, a preliminary European Conference for an International Agreement on Wireless Telegraphy was held in Geneva. The Conference passed a series of Resolutions in favour of the regulation of wave lengths for wireless telephony, including one for the creation of a provisional Executive Committee. This Executive Committee convened a meeting at Geneva towards the end of 1924, which was postponed in view of developments elsewhere. On 3rd June 1924, a question in Parliament raised the point that the reception of the London Station of the British Broadcasting Company had been interfered with by a broadcasting station in Paris. These interferences from transmitting stations operating from abroad became more and more common, and in March 1925, a Conference of broadcasters was convened by the British Broadcasting Company under the Chairmanship of Mr. John Reith, as he then was. It was agreed to found an International Union of Broadcasting Organisations under the title of the "Union Internationale de Radiophonie" (Since 1932 Radiodiffusion). The Union

was created as a non-commercial body with the object of promoting the interests of broadcasting. Geneva was chosen as its headquarters as it was also headquarters of the League of Nations and the International Labour Office. The Director of Programmes of the British Broadcasting Company, Mr. Arthur Burrows, was appointed Secretary General of the new Union and Director of the Headquarters Office, and at the First General Assembly of the Union in April 1925, Vice Admiral Sir Charles Carpendale, who represented the British Broadcasting Company, was elected the first President, an office he continued to hold for the following ten years. The influence of the British Broadcasting Company, and subsequently of the Corporation, was, therefore, considerable from the very beginning.

The technical difficulties which brought about the creation of the new Union were its first care, and in July 1925, a meeting to discuss the matter of European wave lengths was held, and the first European wave plan, known as The Geneva Plan, was applied in the Autumn of 1926. This plan was unofficial in character, but it was approved of as an experiment by a number of the

European Postal and Telegraph Administrations which were represented by "observers" at the meetings at which it was framed. Another unofficial plan of the U.I.R. was formed in Brussels and followed the Geneva plan. In 1929, however, a fresh plan was settled at a Conference at Prague by representatives of the European Postal and Telegraphic Administrations after the Technical Committee of the Union had done all the necessary preliminary studies. After Prague, the Union was recognised by the European Postal and Telegraphic Administrations as an expert Advisory Body, and entrusted with the preparation of successive plans for European frequency allocation. Subsequent to Prague, European Regional Conferences were held at Lucerne in 1933 and Montreux in 1939. But these were Conferences of Governments rather than Conferences of the Postal and Telegraphic Administrations, and each resulted in a European Broadcasting Convention. The U.I.R. was again recognised as an expert Advisory Body.

Another enterprise in which the U.I.R. collaborated arose from the invitation to the Belgian Postal and Telegraph Administration by the Prague Conference of 1929

to have the wave lengths of the European Broadcasting stations measured regularly and communicated to all concerned by a Body it should choose (un organe de son choix), a form of words intended to designate the wave length checking station which the President of the Technical Committee of the U.I.R. had set up in the garage of his private house in Brussels. This checking station was subsequently moved and enlarged, and, finally, in 1938, occupied new premises in Brussels specially built for it at the cost of individual members of the U.I.R. who subscribed to the shares of a Building Society formed under Belgian Law for the purpose. The Corporation was one of the principal subscribers, and this building still exists in Brussels, and the balance of the debt to the Building Society from whom a mortgage was obtained has been paid by the Germans during their occupation out of Belgian francs furnished to them as part of the cost of occupation.

The Union also collaborated in the work of various Consultative Committees of the International Telecommunications Union, and in 1926, the Union aroused the interest of the International Consultative Committee on

• Telephony in the creation of an international network of circuits suitable for the exchange by wire of music for broadcasting purposes.

Active membership of the Union was restricted to duly recognised European broadcasting organisations (whether Government Departments, Public Utility Bodies or Private Companies) but other broadcasting organisations outside Europe were entitled to become Associate Members. Membership of the Union did not bar the participation in a Conference of both the Union and a member organisation with points of view which were not necessarily the same, as, for example, at the Telecommunications Conference at Cairo in 1938. There, the Corporation as a Member of the British Delegation, advocated, with the permission of the Post Office as the Official Delegate, the direct allocation of frequencies in the short wave bands to specified stations. In that case, however, it was decided that this was a matter for a special broadcasting conference rather than for a general radio communications conference, and the Union was requested to prepare a short wave plan for consideration by such a Conference. As a

representative of the Union, as a delegate in its own right, or as an expert attached to the British Government Delegation, the Corporation has taken a very full part in the various International Conferences, touching on matters of importance to broadcasting.^X But the work of the Union

- X. Washington 1927. Captain P.P. Eckersley (Chief Engineer of the Corporation) represented the U.I.R.
- Prague 1929. A Conference on Administrations. Admiral Carpendale, Captain P.P. Eckersley and L.W. Hayes (of the B.B.C.) were part of the U.I.R. Delegation.
- Comite consultatif international des radiocommunications Technical Advisory Conference of Administrations. B.B.C. represented by Capt. P.P. Eckersley and L.W. Hayes as Members of the U.I.R. Delegation.
- The Hague 1929.
- C.C.I.R. B.B.C. was represented by N. Ashbridge (Chief Engineer of the Corporation) and L.W. Hayes, as Members of the U.I.R. Delegation.
- Copenhagen 1931
- Madrid 1932 A Government Conference of Plenipotentiaries. Admiral Carpendale, N. Ashbridge and L.W. Hayes represented the B.B.C. as an Operating Company and were also Members of the U.I.R. Delegation, one of the International Bodies "invited" to take part in the Conference.
- Lucerne 1933 A Government Conference of Plenipotentiaries. N. Ashbridge and L.W. Hayes, experts attached to the British Delegation.
- C.C.I.R. 1934 Technical Advisory Conference. N. Ashbridge and L.W. Hayes experts attached to the British Delegation.
- Lisbon

C.C.I.R. Bucharest.	1937.	B.B.C. represented by L.W. Hayes, one of the "technical experts" attached to the British Delegation.
Cairo	1938.	Administration Conference. B.B.C. was represented by Colonel Home, an "expert" attached to the British Delegation, by Sir Noel Ashbridge, L.W. Hayes and Colonel Home as the B.B.C. Delegation, one of the broadcasting operators (Exploitat- :ions de R��diodiffusion) and by Sir Noel Ashbridge and L.W. Hayes as Members of the U.I.R. Delegation.
Montreux	1939.	European Regional Wavelength Confer- :ence of Governments. B.B.C. was represented by Sir Noel Ashbridge and L.W. Hayes, experts attached to the British Government Delegation. The Corporation was represented on certain of the Comit�� consultatif international telephonique Committees either as U.I.R. or as part of the Post Office Delegation.

was not by any means restricted to technical matters. Although attention in this study is mainly directed to matters with a juridical or quasi juridical interest, it concerned itself with all matters affecting the business of broadcasting. Thus, in 1926, soon after its foundation, the U.I.R. passed Resolutions recommending broadcasters to take precautions to ensure that their national transmissions did not contain material of a political, religious, economic, intellectual or artistic order likely to prove injurious to the spirit of co-operation, or to the good international relations so essential for the international development of broadcasting. At the Union's request, the League of Nations drew the attention of its Member Governments to these Resolutions, and asked them to develop Legislation and contractual relations in keeping with them.

At the same time, a gentleman's agreement was reached amongst Members of the U.I.R. with the object of eliminating from programmes any material likely to give offence abroad, and the organisation was put at the disposal of members for the purpose of avoiding disputes. In a notable

bilateral agreement concluded between the German and Polish Broadcasting Companies on 31st March 1931, the two parties undertook to do everything in their power to prevent the broadcasting of matter prejudicial to the spirit of co-operation and good understanding or offensive to the national sentiment of the other party.

In 1933, the Council of the U.I.R. passed a Resolution affirming that the systematic diffusion of programmes or communications that are specially intended for listeners in another country and have been the subject of a protest by the broadcasting organisation or organisations of that country constitutes an inadmissible act from the point of view of good international relations. The Council called upon the Members of the Union to avoid such transmissions, and requested the governing administrations in control of broadcasting organisations not adhering to the Union to take action with a view to inducing them also to submit to the principles of good international understanding.

Broadcast propaganda was one of the subjects discussed by the Moral Disarmament and Political Commissions of the League of Nations Disarmament Confer-

ence in 1932-3, but the Disarmament Conference did not adopt a broadcasting convention, and the League's Intellectual Co-operation Organisation continued to pursue the subject. For some years, this Organisation, which comprised the International Committee already mentioned and an institute at Paris, had been working, together with the U.I.R., on the problem of using broadcasting for educational purposes, and by a League Assembly Resolution of 1931, this work was broadened so as to extend to international relations. By 1933, the Committee had reached the conclusion that an International Agreement could be prepared on broadcasting in the cause of peace. In consultation with the Government Members of the League, the Committee drafted such a Convention, and it was submitted to an International Conference summoned by the League of Nations in 1936 at which the Corporation was represented and took part in an expert capacity.

At this Conference, the Convention was signed by Twenty eight States, including the U.K., France, the U.S.S.R., but excluding Germany and Italy. The contracting parties undertook to prohibit the radiation from their territories of broadcasts detrimental to good

international understanding, or warlike or subversive propaganda, and of false news. While not binding themselves to conduct peace and goodwill propaganda, the signatories undertook to place at the disposal of the other high contracting parties, if requested, information suitable for broadcasting and calculated to promote a better knowledge of their own country, and of the development of its relations with other peoples and its contribution to the organisation of peace. A procedure was laid down for the settlement of disputes. Reservations concerning political propaganda were made by Spain and the U.S.S.R.

Another matter of great concern related to the general question of inadmissible acts in broadcasting arose from the development of advertising programmes broadcast from abroad in English for reception in the United Kingdom. This traffic was immensely valuable, but strongly objected to by the British Government which had, of course, decided that, with certain very slight exceptions which are described elsewhere, there should be no broadcasting of advertisements by the Corporation. The Union's Resolution of 1933 was heavily quoted and action was vigorously attempted by the British Government

Representative at the Cairo Radio Communications Conference in 1938. The British proposal which was to prohibit programmes of a commercial publicity character in languages other than the national language or languages of the country was not carried, but a Regulation was passed at the instance of Great Britain prohibiting maritime mobile stations from broadcasting programmes intended for direct reception by the general public.

These efforts and some diplomatic pressure were successful except in the case of certain Broadcasting Agencies in France and of Radio Luxemburg which was under French control. Luxemburg was not a subscriber to the International Radiocommunications Regulations or the European Broadcasting Agreements, but France was, and, while promising amendment, did nothing except in the case of Government owned stations. That was the situation in 1939 when the outbreak of war precluded any further steps for the suppression of broadcast advertising programmes in English from the Continent, and, in any event, these immediately ceased as a result of the same set of circumstances.

The Union also took a considerable interest in

juridical matters of international interest, such as copy-right and artists right and had a standing Juridical Committee for the study of these and other questions germane to broadcasting. The Union prepared Memoranda for the information of Members and their Governments in connection with the International Copyright Convention of Rome in 1928 when the important Article 11 bis was introduced by Norway whose Delegation was led by Dr. Arnold Raestad, a prominent member of the Juridical Committee of the Union. The proposals for the Copyright Convention originally fixed to meet in Brussels in 1936, but subsequently postponed and interrupted by the outbreak of war, were also the subject of careful study.

At the invitation of the International Labour Office, the Union was represented on the Committee of Experts which met at Geneva in 1938 to consider a list of questions affecting the rights of Performers in Broadcasting Television and the Mechanical Reproduction of Sounds. The Corporation had a Representative on the Union's Delegation, and as a result of the work of the Committee of Experts, a Questionnaire was prepared for circulation to the various Governments. A meeting between represent-

atives of the Union and the International Federation of the Phonographic Industry, which was concerned with the use of commercial gramophone records in broadcasting, was projected for September 1939, but, here again, the war intervened to prevent its taking place.

As the result of the War, Germany obtained a dominating position in the Union and made it an instrument of her broadcasting policy so that, in 1940, the Corporation withdrew its collaboration.

Since the close of hostilities, no decision has been taken on how the work previously carried on by the Union Internationale de Radiodiffusion is to be restarted and continued. The matter is becoming one of urgent importance in view of the expert functions of the U.I.R. in connection with the preliminary preparations for a new Wave Lengths Conference. The checking station set up in Brussels, after being worked by the Germans during the occupation of Belgium, is now being worked by the I.N.R. (the Belgian National Broadcasting Organisation) in the hope, no doubt, that the cost of this will be repaid by the U.I.R. or some newly constituted organisation designed to take its place. In March 1946, a meeting was held in Brussels at which a new organisation, called

the Organisation International de Radiodiffusion was set up by the countries, chief of which was Soviet Russia, which objected to the continuation of the U.I.R. The British Broadcasting Corporation did not join this new organisation. In an attempt to regularise a difficult situation, a meeting was held at Geneva in May 1946, but the necessary majority of votes, amounting to three quarters, could not be obtained for the dissolution of the still existing U.I.R. At this meeting, the British Broadcasting Corporation were only observers, and as they had left the Union were not entitled to vote. There are, therefore, now two rival organisations of broadcasters in Europe, and no real progress can be made until one of them disappears.

CHAPTER FIVE.THE CORPORATION AND ITS LEGAL STATUS.

Powers of Chartered Corporation, public and private.
Rights in respect of corporeal and incorporated
property, - Persons, Staff, and Third Parties. Libel
and Slander of persons and goods. Jurisdiction.

The establishment of the Broadcasting Authority by Royal Charter in preference to incorporation under special Act of Parliament or the Companies Acts invested the new Authority with the special capacities inherent in a Body incorporated by Royal Charter. At Common Law, a Corporation created by Royal Charter has power to deal with its property, to bind itself by contracts, and to do all such acts as an ordinary person can do.¹ This corporate autonomy is unaffected even by a restriction of the Corporation's powers in the Charter creating it for, at Common Law, such a restriction by the Crown, though it might give the Crown a right to annul the Charter if disregarded, cannot take away from the plenary capacity with which the Common Law endows the Corporation. The

1. Halsbury, Vol. III. Corporations. PP. 22 & 71.

unrestricted corporate capacity of the Chartered Corporation to do an act, even if the Charter expressly forbids that act, is in marked contrast to the strict delimitation by the Legislature and the courts of the statutory or registered Company to its defined objects. Thus, in the case of a Company established under the Companies Acts, if a contract is beyond the scope of the Memorandum and Articles of the Company, it is ultra vires and cannot be effective.

It is proposed in this Chapter to examine certain aspects of the status of the Corporation as a legal person having the rights and duties of a natural person, and what is the law governing broadcasting.

1. CORPOREAL PROPERTY.

At Common Law, a Corporation may acquire and hold land like a natural person, but, by the Mortmain and Charitable Uses Act 1888, land cannot be acquired and held except under the authority of a Licence from the Crown or by a Statute. By Clause 4 of the Royal Charters of 1926 and 1936¹, the British Broadcasting Corporation received the

1. C.M.D. 2756 of 1926.
C.M.D. 5329 of 1936.

necessary Licence to acquire land in the United Kingdom of Great Britain and Ireland (but not including the Irish Free State), the Channel Islands and the Isle of Man.

POWERS OF ACQUISITION OF LAND.

Following the recommendations of the Crawford Committee¹, which may be summed up as "no privileges and no restrictions", the Corporation has no privileges in the nature of compulsory powers, although in fulfilling the obligation "to develop and exploit the service to the best advantage and in the national interest" it may be necessary to acquire land in places which give an optimum technical result. In the intensified conditions of war, this disability was manifest, and so far as land and buildings were concerned, it was only possible to meet the sudden, urgent, and changing requirements of wartime broadcasting by the Ministry of Works being willing, at the request of the Ministry of Information, whose relationship to the Corporation has already been described, to exercise its powers under the Defence (General) Regulations 1939, (Regulation 51 S.R.O. 1939 No. 927) on behalf of the

Corporation. In peace time, the lack of special powers for the compulsory acquisition of land has led either to the Corporation having to be content with such land as could be acquired by private contract, at a reasonable price, which might not be the best for its purposes, or having to pay ransom prices for what it needs. In order to put the Corporation in a position to acquire land compulsorily, it would be necessary for Parliament to pass special Legislation probably invoking the provisions of The Acquisition of Land (Assessment of Compensation) Act 1919. The Act set up an entirely new Tribunal for determining compensation for all land acquired compulsorily by Government Departments and Public Authorities. Alternatively, it would be necessary for a simple Act authorising the Ministry of Works to exercise its powers on behalf of the Corporation in the same way as if the Corporation was a Government Department, but such a procedure would probably involve some sacrifice of the independence of the Corporation.

WARTIME PROTECTION OF PREMISES.

Immediately before the outbreak of war, an Order

(S.R. & O. 1939, No. 967) was made by the Home Secretary declaring all the premises of the Corporation, which were vital to the war effort, to be "prohibited places" under Section 3 of the Official Secrets Act 1911. Later, however, in order to avoid the publicity involved in complying with all the requirements in respect of the Order under the Official Secrets Act, and to bring the Corporation's premises into line with other places of national importance, which were regarded as vulnerable points, it was decided to rescind the Order under the Official Secrets Act, and to proceed under Regulation 12 of the Defence (General) Regulations 1939. The Corporation's premises were accordingly declared to be "protected places" by an Order of the Secretary of State for War made under this Regulation.

PROTECTION AGAINST INTERFERENCE.

In its enjoyment and use of land and buildings, the requirements of the Corporation are specialised as broadcasting requires protection from interference by electrical disturbances for transmitters and receiving stations and from noise for studios. The legal position

as regards electrical interference is difficult as, until the invention of the telegraph and wireless telegraphy, the efficient screening of electrical plant was of no importance. It seems that until the operation of broadcasting is recognised as a normal and ordinary use of land, it will be difficult to import the well known rule established in the Case of *Rylands V. Fletcher* (Smith L.C. 12th Edition 882). Thus, in the Case of *Eastern & S. African Telegraph Co. V. Capetown Tramways Ltd.*, (1902) A.C. 381 P.C. it was held that an occupier of land cannot be made liable for something such as electrical current escaping from his control if the injury complained of is not a physical or tangible injury to persons or property but an interference with some extraordinary and delicate use of property. The question of interference was referred to in the Ullswater Report¹, and it was recommended that if it should be shown that the Postmaster General (or other appropriate Minister) needed further powers for the purpose of protecting the listener, subject to suitable safeguards, the requisite powers should be sought. The Government accepted this recommendation in the Memorandum by the Postmaster General published in

June 1936¹. The principle of protection against electrical interference if covered in Legislation must obviously apply both to the transmitting and reception ends. No Legislation has yet been passed. The question was also referred to in the Report of the Hankey Television Committee which offered the opinion that, as potential sources of interference were likely to be far more numerous after the war, it was vital to the success of television that the Postmaster General should be granted the necessary powers to enforce suppression of such interference².

The possible interference with studio activities by noise can be excluded, to a large extent, by the use of suitable sound dampening materials. This problem has, of course, got its counterpart in the necessity for the Corporation avoiding interference with other persons and their enjoyment of their property. Clauses have been included in a large number of Private Bills by Local Authorities providing that a noise nuisance shall be dealt with as a statutory nuisance under the Public Health Act 1925. They mostly contain a proviso, however, that if

1. C.M.D. 5207 of 1936.
2. S.O. Code, No. 70 - 468.

the noise is occasioned in the course of any trade or business or occupation, it shall be a good defence that the best practicable means within the meaning of the Act of preventing or mitigating it have been adopted. No case has yet arisen affecting the Corporation, but, if it did, the defence outlined in the proviso might have to be considered.

Local Authorities are also in a position to make Bye-Laws for the prevention of danger or obstruction to persons using any street or public place from posts, wires tubes, aerials or any other apparatus in connection with, or for the purpose of, wireless telegraphy or telephone installations stretching or placed on or over any premises and liable to fall on any street or public place (Public Health Act 1925, Section 26).

II. INCORPOREAL PROPERTY.

The Corporation is specifically permitted in both the Charters of 1926 and 1936 to acquire concessions, rights and privileges from Governmental or Local Authorities except in the case of arrangements with Foreign

Governments or Governments of the Dominions in which cases the consent, in writing, of the Postmaster General is required. In this connection, it may be noted that the Corporation has been investigating the possibility of establishing a relaying station in connection with the Empire Service in British Guiana.

PATENTS.

The Corporation was also permitted powers in the Objects Clauses of the Charters of 1926 and 1936 to acquire rights, such as patents and copyrights. The possibility of difficulty in acquiring the necessary patent rights for the technical operation of the service and in settling terms was envisaged by the Crawford Committee who, in their Report, drew attention to Section 29 of the Patent and Designs Act 1907 which gives special powers to the Crown to use patented inventions¹. No steps were taken, however, to confer any privilege on the Corporation, which for a number of years paid a substantial sum to Marconi's Wireless Telegraph Co. Ltd., and Standard Telephones & Cables Ltd., to cover the use of

1. C.M.D. 2599 of 1926.

their patents, and undertook to assign certain rights in respect of any invention produced by the Research Staff of the Corporation. The position of the Corporation is still precarious, and the development of television may lead to situations of difficulty.

COPYRIGHT.

The other important class of incorporated ^{real} rights with which the Corporation is concerned is copyright. Here, again, the Corporation is given specific permission to acquire copyrights in the Objects Clause of the Charters of 1927 and 1937, but no privileges. The rights of copyright owners are not only valid for longer than the rights of a patentee, but they are much more complete. They are also capable of a vast amount of sub-division, and each separate right can be separately held. The peculiar nature of a broadcast programme, which is a mosaic of different rights, intensifies this problem, as a considerable number of copyright holders may be involved. Any one of them, by insisting on unreasonable terms, may jeopardise the production of the programme. In an

ordinary Concert or Music Hall programme, one item can easily be substituted for another, but this cannot be done in the case of the radio "feature" programme, which may require for its topicality or artistic unity the inclusion of particular excerpts of a song, or music, or verse or other copyright material. The position becomes specially difficult when copyrights are concentrated in the hands of large organizations whose only obligation is to satisfy their constituent members.

The difficulties of the situation were brought to the notice of the Departmental Committee appointed by the President of the Board of Trade in 1935 to advise him on what should be the policy of the Government at the proposed Conference in Brussels in 1936 of the International Union for the Protection of Literary and Artistic Works. The Committee made a very limited recommendation for Governmental Regulation applying only to musical and dramatic musical works and qualified it by the remark that their recommendation should not be taken to imply that such Legislation is called for in this country. It is likely, however, that the development of television will

so intensify and add to the existing difficulties that intervention by the State will become necessary in order to adjust the claims of the Broadcasting Authority and the copyright owners.

In the Dominion of Canada, there has been greater boldness where by Section 10 of the Copyright Amendment Act 1931, the rights of Associations dealing in dramatico musical and musical rights are restricted, and provision is made for regulating fees compulsorily. This latter provision was made effective by the creation by Statute in 1936 of the Copyright Appeal Board. The Canadian Legislation followed Article 11 bis of the International Copyright Convention of Rome in 1928 which left it to the National Legislatures of the countries of the Union to regulate the conditions under which the authors of literary and artistic works should exercise the exclusive right of authorising the broadcasting of their works. The question of copyright is considered further in the Chapter on the Corporation as an Operating Concern.

III. PERSONS: EMPLOYEES.

Apart from statutory provisions, the Corporation is

subject to the requirements in the Licences of 1926 and 1936 from the Postmaster General that, except with the approval, in writing, of the Postmaster General, every officer or servant of the Corporation employed in the conduct of the service must be a British Subject.

This followed the provision in similar terms in the Licence to the Company. Amongst the powers transferred by the Postmaster General to the Minister of Information on the outbreak of war was this right of approving employees of the Corporation who were not British Nationals.

In considering the status of the Corporation in relation to employees, there are five Acts of Parliament which call for some scrutiny.

First of all, it is a question to be considered whether or not the Corporation comes within Section 6 (1) of the Trades Disputes and Trade Unions Act 1927 which makes it illegal for any Local or other Public Authority to make it a condition of employment that a person shall or shall not be a member of a Trade Union or to make it a condition of a contract that any person employed on the work shall or shall not be a member of a Trade Union.

There are no decided cases which cover the case of the Corporation, but the significant words "or other public authority" having regard to the content and purpose of the Act probably have not an unrestricted meaning, and if this view is taken, it would exclude the Corporation.^o

While also not altogether free from doubt, there seems to be better grounds for holding that the Public Authorities Protection Act 1893, which limits the bringing of actions against persons employed by Public Authorities acting in their official capacity to within six months of the cause of action arising, applies to the Corporation's servants. In the Case of Johannesburg (1907) P.C. app. P.65, the benefit of the Act was held to relate to a body "rendering a public service without thought of private gain or the benefit of particular persons". The Corporation would appear to fit this definition, as in both the Charters of the Corporation, it is stated in the Objects Clause 3 (a) that the object

^o This point is now of purely academic interest in view of the Repeal of the Trades Disputes and Trade Unions Act 1927 in May 1946.

of the Corporation is to carry on a broadcasting service as a public utility, and in Clause 1 of the Charter, it is stated that the Corporation shall apply the whole of its surplus revenue, if any, and other income solely in promoting its objects. The matter cannot, however, be regarded as absolutely certain and could only be settled by judicial interpretation.

The third Act which requires to be considered is the Factories Act of 1937 as throughout the Corporation's enterprise, there are transmitter stations, premises in which scenery and stage properties and electrical apparatus are manufactured for the use of the Corporation, printing and book-binding works and storage warehouses. The question arises as to whether or not such places are subject to the provisions of the Factories Act 1937 which establishes conditions relating to the health, safety and welfare of employees. There are two points to be considered. First, under Section 151 (a) of the Act it is stated that any premises belonging to or in the occupation of the Crown or any Municipal or other Public Authority shall not be deemed not to be a factory, which

is defined at length in the Act by reason only that the work carried on there is not carried on by way of trade or for purposes of gain. Second, under Section 154, it is provided that, where in any premises which are subject to inspection by or under the authority of any Government Department any manual labour is exercised, the Secretary of State may arrange with the Department that the premises shall, as regards the matters dealt with by this Act, be inspected by an Inspector under this Act.

The question whether or not the Corporation comes within the scope of these two Sections was submitted to the Chief Inspector of Factories who ruled, by letter dated 15th July 1938, that, as at present advised, he did not regard the Corporation as coming under the Factories Act 1937^X.

It is worth noting in this connection that, under Clause 7 (1) of the existing Licence which reproduced a similar Clause in the earlier Licence, the Transmitting Stations of the Corporation are subject to the inspection and supervision of any engineer for the time being nominated by the Postmaster General, but in such a way

- X. The Corporation has sought the advice of the Chief Inspector as to whether the standard of safety at the transmitters is at least equal to that required in the case of ordinary industrial factories.

that the Corporation, its engineers and officers shall not be interfered with in the general conduct and operation of any of the stations.

The fourth Act relates to the employment of children. There is a special saving in favour of the British Broadcasting Corporation under Section 29 (1) of the Children and Young Persons Act 1933. This exempts the Corporation from the restrictions which might otherwise affect the broadcasting of the performance of a child provided the child is not less than Twelve years old, and the public are not admitted on payment to the place from which the performance is broadcast.

The fifth Act which calls for some scrutiny is the Official Secrets Act 1911 which became of great importance during the war when an official ruling was given to the effect that the Governors of the Corporation were persons holding office under His Majesty within the meaning of Section 2 of the Official Secrets Act 1911. The Director General and staff were, therefore, to be considered as employed under persons holding office under His Majesty, and so within the scope of the Act.

SPECIAL WARTIME LEGISLATION.

On the outbreak of war, in common with all other employers, the Corporation and its staff became subject to the control of the Ministry of Labour and National Service acting under the powers conferred by the National Service (Armed Forces) Act 1939. In the Schedule of Reserved Occupations issued by the Ministry for the maintenance of essential services, a specific reservation was made in the case of administrative and executive grades of the Corporation's staff who were over Twenty five years of age, while technical and manual staff in the Engineering Division were reserved in accordance with the qualifications or categories laid down in the Schedule of Reserved Occupations, such as Professional Electrical Engineer, Electrician, Maintenance Carpenter, Instrument Maker and others. The general effect of the Schedule was to reserve staff of Twenty five and over in the manual categories and Twenty three and over in the technical categories.

The Schedule of Reserved Occupations was revised in May 1940 when it was voluntarily agreed by the

Corporation to raise the age of reservation to Thirty in the Corporation's administrative and executive grades. The new Schedule did not have much effect on the technical staff.

On 1st April 1940, a Committee was appointed by the Chancellor of the Exchequer and the Minister of Labour under the Chairmanship of Lord Kennet to consider possible further withdrawals of men of military age from Government or related services. This Committee, after hearing representatives of the Corporation and the Ministry of Information, raised the age of exemption from Thirty to Thirty five. This recommendation clashed with the broadcasting requirements of the Government, and, eventually, indefinite deferment was obtained for a number of essential staff under Thirty five in the administrative, executive, professional and technical grades. On the technical side, on 1st January 1942, the system of category or group deferment was abolished, and was replaced by a system of individual deferment. This was the position until the Control of Engagement Order, 1945, (S.R.O. No. 579) which left the Corporation free to engage

male staff on the administrative, executive and professional grades. The Corporation was also free to engage staff in the technical grades provided they had not been working in certain specified industries such as agriculture, building and clothing, which were still subject to control. All restrictions on the engagement of women were removed.

PERSONS. - THIRD PARTIES.

In its relations with the general public, the Corporation is in the same position as any other legal person. It has no privileges, and on account of the altogether phenomenal coverage of the broadcast spoken word as compared with the circulation of a newspaper, great care has to be taken to avoid slander of persons or goods. In legal history, until the era of broadcasting, libel was considered a more serious tort than slander, and damage was presumed in libel but not in slander except in certain specified cases. A slander by broadcast word may now outweigh in effect almost any conceivable libel. The distinction between libel and slander in English Law did not exist in Roman Law, and does not exist in Scots Law

by which the Corporation is bound in matters within the jurisdiction of the Scots Courts. In most cases of slander by the broadcast word, there is a concomitant libel owing to the fact that practically every broadcast speech is committed to writing and submitted for approval before broadcasting. Absence of malice in the sense of a dishonest mind will protect a broadcaster against an action for slander of goods (*Interoven Stove Co. V. British Broadcasting Corporation* (Sol. Journal 7.12.36) or an action on the case for injurious falsehood (*Hippodrome (Golders Green) Ltd. V. British Broadcasting Corporation* (Times 9 & 10 Feb. 1938), but it will not save him in an action for slander based on an alleged identification between a fictitious character in a broadcast programme and a character in real life (*Hulton V. Jones* (1910) A.C. 20) if that identification can be established in evidence to the satisfaction of a jury. Such a case has been brought against the Corporation but failed (*Lambros V. British Broadcasting Corporation* Times 27 & 28 June 1935). // In view of the importance of its news service, the Corporation is greatly concerned to check the accuracy of what is broadcast, and in its publication

of news, it is rather less well placed than the news-papers in its report of public meetings, as it enjoys no more than the common law privileges which depend upon judicial interpretation, whereas, in the case of a news-paper, the ingredients necessary to uphold privilege have been defined under Section 4 of the Law of Libel Amendment Act 1888^X.

Apart from accuracy in matters of fact, great care has to be exercised in the publishing of criticism or opinion. In the Case of Wilson V. British Broadcasting Corporation and Wheatleigh (1933)^{XX} which is unreported, heavy damages were awarded to a singer whose performance

X. Under that Section, the following ingredients are necessary in order to qualify for privilege:-

- (i) The meeting must have been bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of a matter of public concern.
- (ii) The report must be fair and accurate.
- (iii) The report must be published in a newspaper as defined by Section 1 of the Newspaper Libel and Registration Act 1881.
- (iv) The subject matter of the report must be of public concern and the publication of it must be for the public benefit.

XX. The Case of Library Press Ltd. V. J. Whitaker & Sons Ltd. p.397 Macg.CC (1940-43) confirms the necessity for a critic to be meticulously careful in his statements of the facts upon which any adverse comments is based. If he is inaccurate in the statement of any fact which is relevant to the comment he cannot successfully defend an action for libel however justified his criticism might have been if he had accurately stated the true facts.

in a broadcast of Bach's Passion Music was harshly criticised in a letter in the Radio Times which contained some inaccuracies although the critic was sincere and a man of some musical knowledge. A case in the other direction was that of Berg V. Macadam (Times 9.10.40) arising out of a broadcast criticism in jocular but extreme terms of the boxing ability of Berg (the well known professional boxer). The Judge, of first instance, awarded substantial damages, as he decided the criticism was not fair comment, but his view was not shared by the Court of Appeal who reversed the Judgment in favour of the Defendant. The many anomalies and uncertainties in this branch of the Law led to the appointment by the Lord Chancellor in 1939 of a Select Committee under Lord Porter to examine and report upon the existing Law of Libel and Slander. The Corporation was invited to give evidence before the Committee, and did so, but the work of the Committee was suspended on account of the war. The Committee has now resumed, but has not yet issued its report.

JURISDICTION.

A point of great importance to broadcasters is to

establish which law shall govern broadcast matter. Is it the place of origin? the place of transmission or the place of reception, The place at which a programme is originated is often quite different from that at which it is actually transmitted, and so the place of origin cannot be accepted. In illustration, the programme may be recorded for subsequent broadcast reproduction, or it may be relayed by land line for broadcast transmission in a foreign country without being broadcast in the country of origin. The place of reception cannot be accepted as it is almost impossible to delimit on account of the nature of broadcasting. It seems clear, therefore, that jurisdiction must be fixed according to the place of transmission. Special considerations may, however, arise where a transmission takes place in one country, and copyright owners can adjust their terms in accordance with the intentions of the broadcaster. This problem enters into the questions affecting broadcasting and the comity of nations which were touched upon in the Chapter on the British Broadcasting Corporation as an Institution in the Imperial and International sphere. It also arises in connection with the prohibition of the broadcasting

of matters affecting a Parliamentary Election from wireless stations outside the United Kingdom, and is referred to in point (e) of the Interim Report of the Committee on Electoral Law Reform ^X.

X. C.M.D. 6606. March 1945.

CHAPTER SIX.THE CORPORATION AS AN OPERATING CONCERN.

In this Chapter, attention is focussed on some of the principal matters comprised in the output of programmes and the order in which they are discussed follows the order in which they appear in the Objects Clause which is the Third Clause in the Charters of 1926 and 1936.

In view of the obvious connection with output, a note upon the organization of staff is also included in this Chapter. The subjects treated are:-

Publications.

Public Concerts and other Public
Entertainments.

News, including its transmission.

Copyright.

Artists, including children.

Staff.

The treatment of these subjects is not intended to be exhaustive but rather as illustrative of the practical problems arising under the actual conditions of service.

PUBLICATIONS.

One of the objects in the Second Charter of the Corporation was stated to be "to compile and prepare, "print, publish, issue, circulate and distribute, whether "gratis or otherwise, such papers, magazines, periodicals, "books, circulars and other literary matter as may seem "conducive to any of the objects of the Corporation."

This object confirmed the publishing activities of the Corporation which were, as a matter of principle, complementary to the broadcasting service.

There are three main publications, all weekly periodicals, Radio Times, World Radio and The Listener. The first came into existence as a result of the press boycott of February 1923 to which reference has already been made, the second was the outcome of steps taken by the British Broadcasting Corporation to form the Union Internationale de Radiophonie in 1925, and the third had an educational origin. It was brought into being in response to the recommendation of the Hadow Committee^X to supplement the work of the Corporation's Adult Education Department.

Apart from these periodicals, the Corporation

X. Committee set up in 1926 to report on New Ventures in Broadcasting. Report issued in March 1928.

published in 1928 and early 1929 an anthology of poetry and two household books based on broadcast matter. In discussion with publishing interests, it was admitted that these publications were not strictly necessary to the business of broadcasting, and nothing of a similar kind has been done since.

The most valuable of the Corporation's publications is the Radio Times. This Journal, which covers the programmes for each week, was first published on September 28th 1923 in partnership with Messrs George Newnes Ltd., a partnership which extended to the editorial control until January 1929 when the Corporation assumed the full control which it still maintains. The publication aroused strong opposition by the rest of the Wireless Press and restrictions, both as regards technical articles and advertisements, had to be accepted by the Corporation for the sake of appeasement. Attempts were also made to deny the right of the Corporation to exploit the copyright in its programmes, but apart from the direct financial damage that a relaxation of the existing copyright restriction would cause, the Radio Times could not

maintain its circulation. The Radio Times, better than any independent Journal, is able to perform the important function of presenting the full programmes in a manner consonant with the intention of the programme builders, and these programmes so illustrated and edited can only reach a large proportion of listeners if circulation is maintained. Great care is taken, therefore, to safeguard the copyright in the programmes as compilations within the definition of literary works in Section 35 of the Copyright Act 1911, and a decision to this effect was obtained in the case of the British Broadcasting Corporation V. Wireless League Publishing Co., 1926, Ch. 433. As a matter of service to listeners, the Corporation release daily and week-end programmes for publication in the newspapers in summary form.

World Radio first published on 17th July 1925 under the name of The Radio Supplement published programmes for each week like the Radio Times, and was intended to be, and became, much more than a display of foreign programmes. Once again, there was opposition from the Wireless Press and concessions had to be made. The paper was the nucleus

round which a considerable service to listeners was developed. Also, the editing, illustration, study, and arrangement of foreign programmes provided useful information to the Corporation's Programme Staff. Without the publication of foreign programmes in World Radio, there was no guarantee that the full programmes would be published at all. It was also not unlikely that if published there would be a bias in some particular direction, such as an undue emphasis on sponsored programmes from abroad, with which a perfectly legitimate commercial link could be arranged. World Radio ceased to be published on the outbreak of war when details of foreign programmes were no longer available, and the last issue was dated 1st September 1939.

The Listener, which was first published on 16th January 1929, is a weekly magazine whose main function is educational and to preserve in a permanent form some of the more outstanding broadcasts. The educational side of the work necessitates the use of pictures, plans, maps and diagrams which require a high standard of paper and printing, and The Listener has, therefore, always been

expensive to produce. Of the three Journals, only the Radio Times makes profits which have always been substantial, and is, in fact, one of the sources from which capital reserves are made. On the other hand, World Radio due to the comparatively limited circulation and heavy cost of production, and The Listener on account of the restrictive agreement^X reached with representatives of

X. The agreement with Lord Iliffe is in the following terms:-

"The B.B.C. contends that, although the Royal Charter contains comprehensive powers in respect to publishing, these powers have not been unfairly used, the criterion being that its publications are pertinent to the service of broadcasting.

"The B.B.C. will recognise and deal with a Committee to be established representing the interests which met the Corporation.

"The B.B.C. is prepared to discuss with the Committee any new publishing proposals and to consider representations by the Committee concerning existing publications.

"The B.B.C. states that it is not intended that 'The Listener' should contain more than 10% original contributed matter not related to broadcasting. The rest of the paper will consist of talks which have been broadcast and comments thereon, articles relating to broadcast programmes and programme personalities and news of the broadcast service generally.

"The B.B.C. has no intention of publishing any further daily or weekly newspaper, magazine or periodical. It has also no intention of publishing books or pamphlets not pertinent to the service of broadcasting.

"The B.B.C. as an evidence of its goodwill, states that it does not intend to accept for 'The Listener' more advertisements than are necessary, with its over revenue, to cover its total cost."

the Press and Publishers headed by Lord Iliffe on January 14th 1929 representing the technical press, do not contribute to the revenue of the Corporation.

The Ullswater Committee, after receiving evidence on the Corporation's publications and the policy followed in regard to them, considered that the present system was satisfactory and no alteration was called for.

Nevertheless, as in his Memorandum on the Report of the Ullswater Committee of June 2nd 1936,¹ the Postmaster General expressed the view of the Government that the obligation on the Corporation to refrain, as in the past, from broadcasting its own opinions by way of editorial comment upon current affairs should be extended to the publications of the Corporation.

Developments in connection with the Empire Service have led to a modification of the Iliffe Agreement which in any event was applicable only to the home market for periodicals. In November 1936, four years after the Empire Service began, the first number of a new publication entitled "B.B.C. Empire Broadcasting" was produced. This was a twelve page document and contained particulars

1. C.M.D. 5207 of 1936.

of B.B.C. short-wave programmes six weeks in advance, with illustrations and three pages of editorial matter describing the highlights of the published programmes. The price of the new publication was fixed at 10/- per annum, post paid, a price which did not cover cost. The circulation of the new Journal began at about 4,000, and by the middle of 1939, rose to some 9,000. At that time, it was decided to change the title to London Calling to make it officially the Overseas Journal of the Corporation and to increase its size to sixteen with a maximum of twenty pages and to carry advertisements.

London Calling in this new form was short lived and only two issues appeared before the outbreak of war. For two or three weeks London Calling became a pamphlet containing official Corporation notices regarding its Overseas Service and brief details of such News Bulletins and Programmes as could be fixed so far in advance. London Calling went back to its old size of sixteen pages in the eighth week of the war, but instead of being strictly a programme journal, it carried reprints from talks and a bare four page skeleton of the fixed points of

the short-wave programmes.

From this point, the history of London Calling was one of gradual expansion. Details of programmes became available again and were re-instated in a much abbreviated form. As a result of the outbreak of war in the Far East, the circulation then lapsed and efforts were, therefore, concentrated on the Western Hemisphere. These efforts were so successful that by the third year of the war what was lost in the East was regained in the West. Two thousand copies were distributed weekly to newspaper offices and radio stations throughout the North American Continent. The Articles in London Calling were also widely quoted in the Press of the Dominions and Colonies. The circulation of London Calling is now roughly 10,000 subscriptions and 5,000 free copies.

Early in 1946, the Corporation decided to publish a new Quarterly which would serve as a forum for the serious discussion of subjects relating to broadcasting. It was intended to be read by those really interested in the art and science of broadcasting, and it did not make any concession to popular taste. The circulation of the

Journal was severely limited by the shortage of paper, and there was no question of its having a general bookstall sale.

PUBLIC CONCERTS and ENTERTAINMENTS.

In the First Charter to the Corporation, there was no mention made of the giving of public concerts although this was actually undertaken by the Corporation in order to maintain alive concerts of broadcasting value and public interest, such as the famous Promenade Concerts of Queen's Hall and concerts of Chamber Music were given in the Concert Hall of Broadcasting House. The practice was confirmed in the Charter which came into operation on 1st January 1937 in Section (f) Clause (3) which stated one of the Corporation's objects to be "to organise, provide or subsidise public concerts and other public entertainments, subject to the approval of the Postmaster General, in connection with the broadcasting service of the Corporation and for any purpose incidental thereto." This and Section (h) which was also a new one, are the only ones in which the approval of the Postmaster General was necessary and marked a new departure.

It seems clear from this interposition of the approval of the Postmaster General that the free enterprise of the Corporation must, in the case of the organization of public concerts at any rate, become subject to control. This reservation of power on the part of the Postmaster General was no doubt introduced in order that, if need be, he could watch the interests of concert giving bodies who might feel threatened or else that he might keep a careful check on any enterprise of the Corporation which went beyond the business of broadcasting although possibly germane to it.

In the giving of public concerts and other public entertainments, certain legal consequences ensue which affect the Corporation. It is necessary in the case of the public performance of stage plays to obtain the Licence of the Lord Chamberlain for all theatres within the Cities of London and Westminster and certain of the London Boroughs and outside those limits the proper Licensing Authorities are the County Councils. Places for the public performance of music also require to be licensed and a variety of Statutes cover the matter^X.

- X. The Home Counties Licensing Act 1926 for premises in or within 20 miles of the Cities of London and Westminster, the Music and Dancing (Middlesex) Act 1894 for premises within the County of Middlesex; for premises outside of the aforementioned areas Part IV of the Public Health Acts (Amendment) Act 1890 applies where this part of the Act has been adopted by the Local Authority or by the Local Acts.

In the history of their licensing, however, stage plays appear to have been favoured in comparison with musical performances the licensing of which was inaugurated by the Disorderly Houses Act 1751. The granting of a Licence in respect of theatres and premises for the performance of music is, in both cases, dependent on the Licensing Authority being satisfied that the premises are structurally safe and properly adapted for the convenience of the public. There is an implied warranty towards paying members of the audience that the premises are adequate for the purpose, but not so as to include liability for a latent defect of which the promoter was unaware. (*Frances V. Cockrell* (1870) L.R. 5 Q.B. 184 & 501).

Apart from questions affecting premises, various questions arise in respect of the entertainment itself. The Theatres Act 1843 requires that every new stage play that is produced or acted in Great Britain should be licensed by the Lord Chamberlain and special considerations arise in connection with public entertainment on Sunday. The question has been raised regarding the application of the Sunday Observance Act 1781 (21 Geo. 3 c.

49) to the ordinary transmissions of the Corporation apart from entertainments to which the public are admitted. It clearly has no application to the purely broadcasting activities of the Corporation as it is stated to apply only to places to which persons are admitted by payment of money or by tickets sold for money. The Sunday Observance Act would, of course, apply to entertainments given by the Corporation at which members of the public were present on payment whether or not the entertainment was also broadcast although, in the case of musical entertainments on Sunday, the Act has been modified by the Sunday Entertainments Act 1932, Section 3, which empowers Local Authorities to grant Licences, subject to such conditions as they think fit to attach. New and interesting questions are likely to arise if television programmes are used for purposes of public entertainment, as the matter does not appear to be covered by the Sunday Entertainments Act 1932 which extends only to musical entertainments and films.

Apart from the giving of public concerts and public entertainments, it is sometimes an advantage, in the

production of the programme for the performance being broadcast to be given before an audience as it may stimulate the playing of an orchestra, the singing of a choir or the spontaneity of a comedian. Audiences for this purposes are composed of individuals who are the invited guests of the Corporation. The legal consequences are different from the case of a paying audience composed of members of the general public. The Lord Chamberlain or the appropriate Local Authority has no jurisdiction, and the Corporation is not obliged to obtain any cover either as regards the material performed or the premises in which the entertainment is given, although the Corporation is obliged at Common Law to provide safe accommodation up to the standard required for invitees which was defined by Willes J. in the leading Case of *Indermaur V. Danes* (1866) L.R.I.C.P. 274. In the light of that Case, a host is under an obligation to a guest who behaves normally to see that he is protected against any unusual danger of which the host was or should have been aware.

The question of what is a private, as opposed to a public, audience is not free from difficulty, but some

help can be got from decisions as to what constitutes a public performance within the meaning of the Copyright Act 1911. In the Case of Jennings V. Stephens 1935 (52 T.L.R. P. 343) which concerned the members of a local village institute, the Court of Appeal laid down the principle that whether an entertainment is given in public or private depends solely on the character of the audience. This principle was affirmed in the decisions of the Court of Appeal in two cases which raised precisely the same points of fact and law as to whether broadcasting of music in a factory of some 600 work people to which only they had a right of access constituted a performance of the music in public. The Cases were:- The Ernest Turner Electric Instruments Ltd. V. Performing Right Society, and Performing Right Society V. Gillette Industries Ltd. (Macg. C.C. 1940-43 P. 411). The Court of Appeal decided that it was impossible to say in the case of an audience composed of a substantial part of the working population of a district that the performances were not performances in public.

In the light of these decisions, it seems likely that

an audience of the Corporation could only be considered private where the Corporation has exercised personal selection in the choice of guests, and no one has a right of access to the premises where the entertainment is given.

NEWS.

The legal position in regard to news is peculiar in that there is no protection for news as such, but only for the form in which it is expressed. Mr. Justice North said in *Walter V. Steinkopf* (67 L.T. Rep. 184; (1892) 3 Ch. 489):- "It is said that there is no copyright in "news; but there is or may be copyright in the particular "forms of language or modes of expression by which information is conveyed and not the less so because the "information may be with respect to the current events of "the day." The statement that there was no copyright in news itself, though there was in the form in which it was conveyed, was reiterated by Mr. Justice Joyce in the Case of *Springfield V. Thame* (1903, 89 L.T.R. 242) in which the Plaintiff, a journalist, failed to obtain an injunction restraining the proprietor of an evening newspaper

from selling copies of an article containing an item of news supplied by him to another newspaper. In the International Convention for the Protection of Literary and Artistic Works at Rome in 1928, it was provided by Article 9 (3) that "the protection of the present "Convention shall not apply to news of the day or to "miscellaneous information which is simply of the nature "of items of news." The Departmental Committee on International Copyright appointed by the President of the Board of Trade which reported in 1935 did not recommend any alteration in this paragraph.

There is one other milieu in which an attempt was made to secure protection for news, and that was in the International Convention for the Protection of Industrial Property, the last revision of which followed the London Conference in 1934. It was argued at that Conference that the publication of press news without authority and for commercial purposes is an act of competition contrary to honest practices in commercial matters, and is, therefore, an act of unfair competition within the scope of the Convention. As this argument was resisted a suggest-

tion was put forward for the amendment of Article 10^X bis of the Convention to prohibit specifically the publication without authority and for commercial purposes of press news, whatever may be its content or mode of transmission, during the day following the first publication. This suggestion was not unanimously accepted, and so the Industrial Property Convention did not extend its scope to include press news, and there the matter stands. The legal situation explains one of the reasons why throughout the history of the Company and the Corporation, the News Agencies and the Newspaper Proprietors, who to a large extent owned them, thought it necessary to impose restrictions for the protection of their business. Another

X. Article 10 bis of the Convention reads as follows:-

1. The countries of the Union are bound to assure to persons entitled to the benefits of the Union an effective protection against unfair competition.
2. Every act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
3. The following acts among others shall be prohibited:-
 - (a) All manner of acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities of the competitor; (b) False allegations in the course of trade, of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor.

reason why restrictions were imposed was, of course, because of the threat to the sale of newspapers which newspaper proprietors felt to be contained in the broadcasting service.

The emancipation of the Company and Corporation to a position of freedom in the getting and use of news was very gradual as the Company was in a very weak position to bargain when the broadcasting service began, and the newspaper proprietors were slow to be convinced that no prejudice would be caused to their sales. On 11th November 1922, a provisional agreement was signed between the four News Agencies (Reuters, Press Association, Exchange Telegraph and Central News) and the British Broadcasting Company which restricted the broadcasting of news to half an hour between 6 p.m. and 11 p.m. and tied the Company to obtaining its news exclusively from the four Agencies who were to be given a broadcast credit before each bulletin. But this agreement only lasted until 12th December when a modification was introduced by which the first bulletin was not to be broadcast before 7 p.m. so that there might be no interference with the sale of

evening newspapers. The first news bulletin was broadcast at 7 p.m. on 12th December 1922 and was telephoned to the Company from Reuters (who acted on behalf of all four Agencies) and taken down on a typewriter. The restrictions on the supply and use of news were embodied in the Licence and Agreement from the Postmaster General to the Company dated 18th January 1923¹ to which reference has already been made, and provided an interesting example of a Minister intervening to protect a particular industry whose produce, which was indispensable to broadcasting, could not otherwise be obtained.

Following upon the Report of the Sykes Commission of 23rd August 1923 which advocated greater latitude being granted for the broadcasting of news, an arrangement was made with the News Agencies and the Societies representing the Press by which the Company was permitted to broadcast the proceedings at functions, including speeches, at any hour provided such broadcasts contained only a preliminary announcement of the event without any further description or comment. The restriction on broadcasting news bulletins before 7 p.m. was maintained and provision was

1. C.M.D. 1822 of 1923.

also made for a joint broadcasting committee which met regularly to settle points of dispute.

The broadcasting of news again came under scrutiny with the appointment of the Crawford Committee which in its Report of 21st March 1926 warned the Press that the "country cannot withhold privileges too widely enjoyed "without restriction elsewhere."¹. A further impetus towards freedom was given during the General Strike of May 1926 when the "Press Agreement" was waived and Five bulletins a day were broadcast although as soon as the Strike was over, there was a return to the previous practice of two bulletins, one at 7 p.m. and the other at 9 p.m.

That was the situation when the new Corporation came into operation on 1st January 1927, but, unlike the Company which laboured under the restrictions imposed by the Postmaster General in the Agreement and Supplemental Agreement of 18th January 1923², the Corporation's Charter stated that one of the objects of the Corporation was "to "collect news and information relating to current events

1. C.M.D. 2599 of 1926.
2. C.M.D. 1822 of 1923.

Newspaper Proprietors Association and
Newspaper Society.

"in any part of the World and in any manner that may be
"thought fit to establish and subscribe to News Agencies."
Moreover, the Postmaster General defended the necessity
for this freedom when bringing the new Charter to the
notice of the House of Commons. The main source of news
at that time was, however, still the four News Agencies
to whom the Company was originally tied, and it was
necessary still for the new Corporation to exchange some
part of its freedom for concessions from the Agencies.
A new arrangement was made with the Four Agencies and
Bodies representing the Press dated 10th February 1927
which ^{mitigated} ~~reduced~~ the restriction on the source of supply to
the four Agencies only. The Corporation did not,
however, rest content and continued to represent the need
for greater freedom and a fresh arrangement was reached
on 18th September 1928 which contained several notable
modifications of the existing restrictions. It provided
that news might be broadcast as early as 6 p.m. and a
great many more eye witness accounts were permitted, but
still required the news to be obtained exclusively from
the four Agencies. On 9th December 1929, there was a

further advance and the Corporation was permitted to compile its own news bulletins, working on the complete service supplied direct by the four Agencies. The restriction on the times for broadcasting news was strictly construed, and it was only for events of special national interest and importance that there was any relaxation, as for example, the General Election results in 1929 and extra bulletins telling of the final stages of the illness and death of King George V. in January 1936.

In other directions, the Corporation strove to enlarge its liberties. In January 1932, an experimental service for broadcasting news to the Empire was begun, and in October 1932, following a conference with the Empire Press Union, a Joint Committee was set up on the analogue of the Joint Committee which dealt with the services broadcast in the United Kingdom. An attempt was also made to obtain admission to the Press Gallery of the House of Commons, but without success. This was not conceded until September 1941 when six seats were allocated in what is called the "B.B.C. Gallery;" it is not part of the main Press Gallery.

The whole question of news was carefully considered by the Ullswater Committee who, in their Report dated 31st December 1935,¹ after stating "it is of the utmost importance that the news distributed by the B.B.C. should be a fair selection of items impartially presented", went on to indicate the danger involved in the dependence of the B.B.C. on four commercial Agencies, and to express the view that it was "important that freedom of choice as to sources of news should be maintained, and the Corporation should continue to supplement the Service obtained from the Agencies by sending out its own correspondents and by drawing information from other authoritative sources." The Committee also said "we regard the existing arrangements between the B.B.C. and the newspaper agencies as satisfactory, but we are anxious that there should be no bar to variations as future circumstances may require." In respect of the supply of news for the Empire Service, the Ullswater Committee, in paragraph 120, expressed the view that while the agreements with the Empire Press Union were

satisfactory, they would regret to see any further limitation imposed either upon the time or extent of the messages or their subject matter. A plea was also made for the facilitating of the re-broadcasting of news bulletins by broadcasting organizations in the Empire. The Corporation did not offer any comment on these paragraphs in their published Observations, nor did the Postmaster General on behalf of the Government in the White Paper issued in June 1936¹.

But in the new Charter of the Corporation, the importance of news was recognised by the words of the Preamble which referred to the great value of the service as a means of information, education and entertainment. In the Preamble to the First Charter, the word "information" did not appear. In the Charter itself, the same unrestricted provision in the Objects Clause which appeared in the First Charter was reproduced.

With the encouragement of the new Charter, new efforts towards freedom from restrictions were made by the Corporation, and on 24th March 1938 a new arrangement was

1. C.M.D. 5207 of 1936.

signed between the Corporation and the Bodies representing the Press under which the Corporation agreed not to broadcast in the Home Service news bulletins earlier than 6 p.m. or later than 2 a.m. except in the case of events of urgent national importance or exceptional public interest. The other provisions precluded the broadcasting of betting news and paid advertising matter, but did not restrict the Corporation in respect of any other liberty permitted by the Postmaster General. The Corporation was no longer bound to take its news solely from the original four News Agencies and claimed to deal separately with the Agencies concerned instead of as hitherto with a consortium. No mention was made of any necessary credits, and even the formula "copyright reserved" was soon dropped.

In times of crisis when the national interest became a dominant consideration, the restrictions on the broadcasting of news had to be abandoned. This was so during the General Strike and in September/October 1938, the crisis over Czechoslovakia was covered by extra bulletins

and in May 1939, it was decided to have four news bulletins at 6 p.m., 9 p.m., 11 p.m., and 11.55 p.m. In view of the possibility of large parts of Europe becoming inaccessible to British Correspondents, efforts were also made to obtain the services of the two American owned Agencies, British United Press and Associated Press of Great Britain. There was a good deal of difficulty over this even in Parliament, as shown by the question asked by Mr. Tom Johnston on 7th February 1938, who asked the Postmaster General, Major Tryon, if he was satisfied "that it was in the national interest that the "selection and control of a considerable proportion of "the international news supplied to the people of this "country should be in the hands of persons who are not "British Subjects, and whether he will take whatever "steps are appropriate to safeguard the public interest "in this matter." In reply, Major Tryon stated that the Broadcasting Committee of 1935¹ had expressed the view that freedom of choice as to the sources of news for the broadcasting service should be maintained, and that he saw

no reason to call in question the discretion of the Governors of the Corporation. Opposition also came from the established Press interests owning the News Agencies who did not look favourably on the threat of American competition, particularly as the American Agencies were extremely wealthy and could afford to sell their news cheaply by reason of their enormous sale of news in the United States. The Corporation persisted, however, and in September 1939, immediately on the outbreak of war, both the British United Press and the Associated Press of Great Britain were added to the other sources of the Corporation.

Following the same principle that in times of crisis the national interest must be served, the Corporation rearranged the number and timing of its bulletins so that, at the outbreak of war, twelve news bulletins were broadcast in addition to hourly news flashes, as necessary. The number of bulletins was reduced to seven on 7th September 1939 namely:- at 7 and 8 a.m., 1 p.m., 4 p.m., 6 p.m., 9 p.m. and midnight, and in January 1940, it was

agreed, in deference to representations by the Press, to drop the 4 p.m. news bulletin on Sundays as well as week days with a reservation that it would be reinstated if a change of conditions should convince the Corporation that this was in the national interest. As a matter of policy, the Corporation adopted a conciliatory attitude towards the Press and avoided stressing the possible conflict between sectional and national interests, particularly as it was still primarily dependent for its news on the British Agencies although it began increasingly to appoint special local correspondents and war reporters exclusive to it. It was realised that it would be enormously costly to create a news gathering organization of adequate strength on a world wide scale, particularly if the news could not also be sold to other interests as a by-product of broadcasting.

The attitude of the Press became apprehensive and inclined to the view that the balance of advantage had now passed to the Corporation. At the Annual Meeting of the Empire Press Union in 1941, Major Astor said that the

Corporation "naturally had advantages over the Press which asked only for equality of treatment so far as that could be achieved."¹ Mr. Irvine Douglas of Australian Associated Press "complained of the unfair preference given to the Corporation by certain Government Departments who seem to regard the Corporation as omnipotent and the Press as being of secondary importance."² The Corporation, on the other hand, frequently had cause to complain that the release time for news was fixed with greater regard to the interests of newspapers than of national needs. Some difficulty also arose over censorship. In 1943, the Annual Report of the Empire Press Union alluded to "a strong impression in the minds of Empire Correspondents that the B.B.C. had definite advantages because its censors were members of its own staff, although their appointment as such was nominally subject to the Chief Censor's approval."³ The Report of the Council for 1943 made similar complaints⁴, but those making the complaints overlooked the fact that, while the submission of matter by the Press to censorship was voluntary, it was

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| 1. & 2. | The Times | 12:2:41. |
| 3. | World Press News | 28: 1:43. |
| 4. | The Times | 26:1:44. |

compulsory for the Corporation and in the exercise of their powers the Corporation censors were responsible to the Chief Censor of the Ministry of Information.

The attitude of the Government is summed up in the answer given by Mr. Brendan Bracken to a Parliamentary question which suggested that the Corporation had received priority over the Press in the release of some war news. He stated that the circumstances of the release of the particular story were special and involved some conflict between two principles to both of which the Government have always attached much importance: the holding of an even balance between the Press and Radio, on the one hand, and the speediest possible release of all communiques dealing with the operational news on the other. The Ministry's anxiety to maintain a balance between Press and Radio resulted, however, on several occasions in the world getting its first news of events from German sources^X.

In 1943, the Corporation came to separate agreements with Reuters and Exchange Telegraph, and in 1944 with

X. Hansard Vol. 376, H. of C. Col. 1562.
Vol. 398. H. of C. Cols. 1262 and
1263.

with Press Association; also in 1944, it renewed for five years existing agreements with British United Press and Associated Press of Great Britain. In the interval between the two last agreements, Reuters became a Trust with the shares owned equally by the London and Provincial newspaper interests but established so that no individual proprietor could gain a dominating interest and so that the whole of the revenue is to be applied to the Company's Development and expansion.

The final move in the Corporation's advance towards freedom in regard to its use of news was taken on 21st June 1945 when it was intimated to representatives of the Press that the arrangement of 24th March 1938 would be terminated and that it would not be replaced.

THE TRANSMISSION OF NEWS.

A matter germane to news getting is the methods by which news is transmitted and how the Corporation stands in regard to them.

In the work of gathering news, the Corporation is in a position inferior to a newspaper in respect of internal

telegrams, and in respect of telegrams from abroad or cables was in an inferior position until very recently. In the case of internal telegrams, the matter is covered by Section 16 of the Telegraph Act 1868 which stipulates that the arrangements for the transmission of telegrams at reduced rates may be made only with "the Proprietor or Publisher of any public registered Newspaper or the Proprietor or Occupier of any News Room, Club or Exchange Room." The attitude of the Post Office was that if the existing qualifications for reduced rates were modified in favour of the Corporation, it might be difficult to ensure that other parties who received messages used them primarily for general information.

In the case of telegrams from abroad or cables the claims of broadcasting organizations to equality of status with the Press were recognised by the Cairo Telecommunications Convention of 1938, Chapter XXII to which the British Government was a signatory. The relevant passage in the Convention was to the effect that Press rates should be applicable to telegrams containing news for broadcasting addressed to authorised broadcasting

stations though not to telegrams relating to broadcasting arrangements.

The Corporation applied to the Postmaster General to revise the Statutory Rules and Orders under the Telegraph Acts 1868 and 1926 so as to embody the changes in the International Telegraph Regulations resulting from the Cairo Convention. Owing to the outbreak of the war, no revision of the Telegraph (Foreign Written Press Telegrams) Regulations 1937 took place, but the Post Office nevertheless confirmed the Corporation in the enjoyment of a privileged press rate.

In the use of telephones, the Corporation and the Press are both in an equally unprivileged position.

COPYRIGHT.

In the First Charter of the Corporation, the position in regard to copyright was one of no privilege and no restriction. In Section (f), Clause 3, the Corporation was given the right "to acquire by purchase or otherwise copyrights in any literary, musical and artistic works, plays, songs, gramophone records, news and other matter."

These different types of works represented the raw material of broadcasting and copyright protected their owners against the exploitation of them without their agreement. Copyright is a comparatively modern concept which was attached originally to book publication and was gradually developed and extended as new uses for an author's work were invested, such as the popular stage and concert hall, gramophone records, films and broadcasting. These new uses lead also to a reassessment of the value of the different rights comprised in an author's work and expert organizations arose for their control and exploitation in the interests of authors and publishers such as The Performing Right Society which controls musical petits droits, the Society of Authors, Playwrights and Composers which, among other things, arranges minimum terms for the broadcasting of literary and dramatic works and Phonographic Performance Ltd., which controls the rights of manufacturers of gramophone records.

In the United Kingdom, copyright is governed by the Copyright Act 1911 which was obviously drafted without any thought of broadcasting, nor was the matter taken much

further by the latest of the International Conventions on Copyright at Rome in 1928 which, by Article 11 bis, confers upon an author the sole right of authorising the broadcasting of his work but leaves it to the national legislatures of each country to fix the conditions upon which this right shall be exercised. Nothing has been done in this country by the legislature and the application of the 1911 Act to the modern conditions of broadcasting has been left wholly to judicial interpretation.

The act of broadcasting was, for the first time, judicially held to constitute a public performance within the meaning of the Copyright Act 1911 in the *Messenger Case* (Macg. C.C. (1923-28) 302) although the performance in question might take place in a private studio and could only be made audible to the public by the use of receiving instruments in the homes of listeners. This decision was followed by the *Hammonds Bradford Brewery Company Case* Macg. C.C. (1923-28) 379 when it was held that a public performance by loudspeaker of a broadcast musical work constituted a performance within the meaning of the Copyright Act 1911, separate and distinct from the

original performance by broadcasting. There is a curious discrepancy between the decisions in the Messenger and Hammonds Bradford Brewery Cases. The latter Case turns on the fact that the original broadcast performance is only made audible in public by the act of the listener switching on a receiving set in a public place. There must be an act of reproduction before the performance can be heard. This decision is in line with Section 35 (1) of the Copyright Act, 1911 which defines a "performance" as meaning "any acoustic representation of a work - including such a representation made by means of a mechanical instrument." But, in the Messenger Case, the decision seems to rest upon two alternative theories, neither of which involves the giving of an acoustic performance by means of an act of reproduction. According to the one theory the performer in the studio, if he broadcasts a copyright work without permission, would be technically the infringer because his performance is made audible to the public by means of wireless broadcasting and, according to the other theory, the performance consists in the act of the broadcaster setting in motion

the ether waves with the intention of actuating the receiving sets of listeners. This latter theory was further discussed without a decision in the Case of Mellor V. Australian Broadcasting Commission (Law Reports (1940) A.C. 291). In that Case, the question arose as to whether, if a work is performed in a broadcasting studio to which the public are not admitted and no authority is given by the Broadcasting Company to its subscribers to use music otherwise than in private, the broadcasting to a large number of subscribers would constitute a performance in public by the Broadcasting Company. Mr. MacGillivray, K.C., the learned Editor of the reports entitled "Copyright Cases", remarks in his preface to Copyright Cases 1940-43:- "It is certainly more than arguable that ten thousand performances in private cannot make even one performance in public." Neither of the two theories discussed fits the definition of a performance in the Copyright Act 1911, and a precise definition of what element in broadcasting constitutes a performance is required in order to determine jurisdiction for copyright and other purposes. This

has been given in the Copyright Amendment Act 1931 of Canada which states in Section 2 (3) "performance" means any acoustic representation of a work or any visual representation of any dramatic action in a work, including a representation made by means of any mechanical instrument or by radio communication.

A new point has arisen from the development of what are known as "Relay Exchanges". At these Exchanges broadcast programmes are received on a powerful receiving set and are then distributed by wire after amplification to subscribers, who have loudspeakers in their houses but not separate receiving sets. In the light of the decisions in the *Messenger* and *Hammonds Bradford Brewery Cases*, it is probable that this act of distribution would be held to constitute a public performance in itself, although the programmes distributed are not audible until they reach the loudspeakers in the houses of the subscribers.

In order to obtain copyright protection, a broadcast performance must come within the definition of literary, dramatic, musical or artistic works contained in the

Copyright Act 1911. The Act appears to cover all broadcast matter, save running commentaries which are extempore and do not take literary form if at all until after they have been broadcast. Thus the performance by loudspeaker in public commonly called rediffusion of a broadcast running commentary cannot be restrained as an infringement of copyright. The matter becomes of even greater significance and importance in the case of television where there is no protection for either the running commentary or the broadcast images of the spectacle which may be of great value for the purposes of public entertainment. A good example would be the televised broadcast of an important boxing match. Such broadcasting might not only injure the attendance at the match but also the sale of rights to newsreel companies. Unless, therefore, a broadcaster is in a position to control the use made of broadcast transmissions of this type, he may not be able to obtain the facilities which he requires and which the public interest will certainly demand. In spite of the skill, knowledge and expense involved in the creation of a broadcasting programme,

there is no droit d'émission vested in the broadcaster analogous to the right established in the maker of a mechanical record such as the maker of a film or a gramophone record.

The promoters and organisers of sporting contests have become aware of the difficulty and have bound themselves into an "Association for the Protection of Copyright in Sport." Their position is all the more difficult as, in a recent case before the Privy Council,¹ the view was taken that even if access is not given to a broadcaster to report a sporting event and he obtains the material he requires by overlooking the scene from ground which is not subject to the control of the promoter of the sporting event, he commits no legal wrong.

In the case of a talking film, so far as the maker is concerned, there is a copyright in the film itself as an "Artistic" work within the meaning of the Copyright Act 1911 and in the sound track, a right similar to that of the maker of a gramophone record. Under Section 19 (1) of the Copyright Act 1911 there is copyright in records, perforated rolls and other contrivances from which sounds

1. Victoria Park Racing and Recreation Grounds Co. Ltd. v. Taylor and Others. Times Newspaper, 21st January 1938.

can be mechanically reproduced in like manner as if such contrivances were musical works and the owner is not only in a position to prevent one record from being copied directly or indirectly from another record but the record itself is given copyright protection as if it was a musical work and therefore includes performing rights. This latter right was confirmed judicially by Maugham J. in the Case of Gramophone Co. Ltd., V. Cawardine & Co. (1934) Ch. 450.

This decision follows the wording of the Act and one of the effects of it is that the owner of the copyright in a record of a musical work has a performing right in that record subsidiary only to that of the owner of the work recorded and if the musical work is non-copyright his performing right is absolute. In the case of a broadcast transmission, however, where at least as great a degree of production and adaptation of the literary and musical materials is required as in the case of a gramophone record, there is no right in the transmission accorded to the broadcaster analogous to that confirmed in the maker of a gramophone record. The

vital distinction between the two is, of course, that broadcast programmes unless broadcast from a record do not ever become fixed in any evidential form. The need for a broadcaster to obtain protection for his transmissions in order that he in turn may protect the interests of promoters of sporting events, authors and artists is likely to increase with the development of television, but before it can be made effective by national legislation, it will require to obtain acceptance in the International Copyright Convention for the Protection of Literary and Artistic Works.

In order to overcome difficulties in timing, particularly in the services broadcast overseas, the Corporation has had to make an increasing use of records of various kinds - gramophone records, sensitised steel tape and film and these involve the covering of recording rights in the case of all copyright literary and musical works recorded. The situation becomes even more complicated when records belonging to third parties are incorporated in a new record. This process is known as "dubbing" and involves covering not merely the mechanical rights and rights of adaptation in the owner

of the literary or artistic work originally recorded but similar rights in the owners of the record.

The production of gramophone records and films in Great Britain are in each case concentrated for the most part in narrow groups of Companies^X. In the case of gramophone records, these groups are organised for the exploitation of the rights in the records in a Company known as Phonographic Performance Ltd., which like other copyright controlling bodies, such as the Performing Right Society, is in a position of enormous strength.

In its Report, the Ullswater Committee in para. 71, recommended that payments to authors and composers should be generous but added in para. 72:- "At the same time we foresee the possibility of disagreement at some future date if the bodies which control a large volume of musical or other material for performance should advance claims which the Corporation would not feel justified in conceding. If that contingency should arise, it would be right for the dispute to be settled by reference to an arbitration tribunal agreed upon by the parties and the B.B.C. should endeavour to secure this; but if agreement

X. Gramophone Records	}	Decca Group
		E.M.I. Group.
Films	}	Rank Group.
		Maxwell-Warner Group.

as to arbitration cannot be reached, we recommend that the question should be decided by a tribunal set up by Parliament for the purpose."

This recommendation went considerably further than that of the Departmental Committee on International Copyright which reported about a month earlier than the Ullswater Committee.

The possibility of disagreement between the Corporation and one of the bodies controlling a large volume of copyrights foreseen by the Ullswater Committee became a reality. Stimulated by the increased revenue granted to the Corporation under the new Licence which came into operation on 1st January 1937, the Performing Right Society put forward claims in respect of the Home and Empire Services which the Corporation did not feel able to accept, and by mutual agreement, resort was had to private arbitration. The Chairman of the Tribunal was Mr. A.T. Miller, K.C., the Leader of the Commercial Bar, Sir William Jarratt, Ex. Comptroller of the Patent Office, which is the Department responsible for copyright matters, and Sir Harold Gibson Howitt, M.C., a distinguished

Chartered Accountant. The Tribunal held sittings during three weeks ^x and fixed new terms which were on the whole favourable to the Corporation rather than the Society, but they refrained from giving the reasons for their decision chiefly because in course of the hearing it proved extraordinarily difficult to set the calculations on a rational basis. The award of the Tribunal is still the basis of payment to the Performing Right Society but will no longer be accepted by the Society after the end of 1946. All the other agreements with copyright owning organizations have been reached by private agreement, but the Corporation has no assurance that the fees it is paying are reasonable or any protection against unreasonable demands if made. In Canada, the importance of broadcasting has been realised, and under a 1931 Amendment to the Copyright Act 1921, there has been set up a Copyright Appeal Board for settling the fees payable in respect of performing rights by music users. An awareness of the problem has been shown recently by the Lord President of the Council (Mr. Herbert Morrison) who, in the course of the Debate on the White Paper of July 1946,

x March 1937

stated:- "We should be on our guard against interests who want to see the B.B.C. milked".¹.

In the new Charter of 1st January 1937, the old Section (f) of the Objects Clause was reproduced in Section (h) except that the word "gramophone" before the word "record" was replaced by the word "mechanical" which was generic rather than specific. A new Section (l) was introduced enabling the Corporation to acquire films for use in the broadcasting service, and to dispose of such films, subject to the important proviso that nothing should be deemed to authorise the Corporation to display films for the entertainment of the public except by means of broadcasting. This proviso was introduced, no doubt, in order to placate established interests who might otherwise have been unwilling to co-operate with the Corporation. This co-operation is of the utmost importance in television, and is likely to become even more so.

In the Report of the Television Committee, which sat under the Chairmanship of Lord Hankey and reported on 29th December 1944, it was stated at para. 54:- "We are, however, encouraged by the evidence to believe that the

1. Hansard Vol. 425. H. of C. Col. 1092.

cinema industry and the British Broadcasting Corporation, working in collaboration and not as competitors in the exploitation of television, will achieve considerable results of a character beneficial to both."

During the war, some difficulties arose in connection with the use of copyright works belonging to enemies who were defined in the "Trading with the Enemy Act 1939", Section 2, "as any individual resident in enemy territory or any body of persons carrying on business in any place so long as those persons were controlled by an enemy." The difficulty was intensified after the occupation of large parts of Europe by Germany. In such cases, the Corporation had either to risk the lack of permission where time was limited, or apply to the Comptroller of Patents for a compulsory Licence by virtue of his powers under the Patents, Designs, Copyright and Trade Marks (Emergency) Rules 1939 (S.R.O. 1939 No. 1375) adopted under Section 2 of the Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939. The application, except in special cases, had to be advertised for fourteen days, which made the procedure necessarily slow.

Payments due to enemies on account of copyright fees were recorded with the Custodian of Enemy Property to whom payment was made, but the Comptroller of Patents only was able to give a good title. It is interesting to note that, after the last war, indemnity clauses were inserted in the Peace Treaties in respect of copyrights, trade marks, &c., owned by enemies.

One of the developments of war-time broadcasting has been the interchange between the United States and Great Britain of broadcast programmes, but this interchange was in many respects impeded by the fact that there is no Copyright Union between the two great English-Speaking peoples of the globe. The Industrial Property Department of the Board of Trade has given much attention to the business of placing copyright relations between the United States and Great Britain on a satisfactory basis, but so far, there has been no result.

ARTISTS.

The Professional Artists engaged by the Corporation for broadcasting fall roughly into the two broad classes

of musical and dramatic performers. Up to 1925, the rights of artists were secured only by Contract, and some at first refused to broadcast because they feared mutilation of their act by the possible imperfections of the process of broadcasting, and others because the theatrical proprietors and concert promoters to whom they were contracted refused permission for them to broadcast, and exercised their rights under the barring clauses in their Contracts. These barring clauses, which are quite usual in theatrical engagements, were of two kinds. They either prohibited an artist from performing for broadcasting without the express permission of the theatrical proprietor during the period of the artist's contract, or they prohibited an artist from performing within a certain distance and space of time of a stage performance in a particular place. The clauses were so worded that a broadcast performance, particularly if televised, might very well be held to be in breach of them. It is also a fact that the principal chain of theatres in Britain is owned by one Company which is thus in a very strong position to control artists¹. Broadcasting, except in a

1. General Theatres Corporation.

few exceptional cases such as to members of a repertory company, cannot offer complete employment to a musical or dramatic artist, but a chain of theatres can.

One of the results of a de facto monopoly of broadcasting has been the stimulation of organizations for the protection of artists such as the Musicians Unions, Artists Equity, the Incorporation Society of Musicians, and the Variety Artistes Federation. But it was from industry that the first step towards the special legal protection of artists was taken. It will be remembered that the gramophone industry, while it was protected by the Copyright Act 1911 from the unauthorised reproduction of the records or mechanical contrivances it had manufactured had no protection against the making and selling in competition with the industry of records of an artist's performance of a non-copyright work or of a copyright work for which a compulsory Licence under Clause 19 (2) had been obtained. The reason for this was that there was no protection of the mere performance of a work as distinguished from the copyright in the work performed, and the object of the Dramatic and Musical Performers

Protection Act of 1925 was to make clandestine recording of an artist's performance impossible. This Act, while it did not create any right in a performer analogous to copyright, gave the performer a summary remedy against any person knowingly making any record of a dramatic or musical performance without the consent in writing of the performer and using the record for purposes of trade.

With the passing of years, the Act has had the unexpected result that it has become an embarrassment in some respects to the gramophone industry which was responsible for its being passed. The Act has made it very difficult for record manufacturing companies, or the makers of news reels or broadcasting organizations in this country, to make a record or news film with sound track of any event or public spectacle in which artists may be engaged, as for example, the Coronation Ceremony in which many artists took part as members of choirs, orchestras and bands. Both on grounds of expense and practical difficulty, it would not be possible to obtain written consents beforehand from all who might be concerned.

Artists, however, awoke to their need for protection by the passing of the Act, and in 1930, there was an attempt upon the part of a performers' organization to create a right of property in recorded performances which did not succeed. Musical Performers Protection Association Ltd. V. British International Pictures Ltd., (46 T.L.R. P. 485).

The next attempt on the part of artists to secure protection for their performances was made when, in 1935, the President of the Board of Trade appointed a Departmental Committee to consider and make recommendations on the "Propositions avec exposes des motifs" prepared by the Belgian Government and the Bureau of the International Union for the Protection of Literary and Artistic Works which were intended for submission to the Conference to be held in Brussels in the year 1936 for revising the International Convention for the Protection of Literary and Artistic Works which was last revised in Rome in 1928. The Belgian Government proposed the addition of the following new Article 11 quarter:-

"L'interpretation d'une oeuvre tombé ou non dans le

"domain public est protégée dans les conditions a
 "fixer par la législation interne de chaque pays de
 "l'Union."

The principle of the proposal was supported in evidence by the Incorporated Society of Musicians and the Variety Artists Federation, both of which Societies are particularly concerned owing to the usually limited repertory of their members. The principle was also, to some extent, recognised by the Gramophone Companies who had offered to make over to the performers concerned a certain percentage of the Royalties they collected in respect of the performance of gramophone records.

The Corporation objected to the proposal on the ground that the matter was not one relevant to the Copyright Convention. The Departmental Committee decided, nevertheless, that some provisions on the lines of the Dramatic & Musical Performers Protection Act ¹⁹²⁵ could, with advantage, be inserted in the Convention, and suggested the following new Article:-

"Without prejudice to any rights of authors, the
 "performer shall be protected against the making,

"without his consent, of records or similar instruments for reproducing sound by which his interpretation of a dramatic or musical work, whether fallen into the public domain or not, may be reproduced."

This proposal did not cover the exploitation of the artist's performance by means other than the use of records. Difficulty is likely to arise from the use for public entertainment of a televised performance.

In 1937, the Governing Body of the International Labour Office decided to appoint a Committee of experts to make a preliminary examination of the question of the Rights of Performers in Broadcasting, Television and the Mechanical Reproduction of sounds, and this Committee met in November 1938. One of the organizations invited to send an expert was the International Broadcasting Union, of which the Corporation is a Founder Member. The Union had already expressed a view opposing "the extension of the idea of author's rights to persons other than those who create the works in question. Settlement of the question of performers' rights should not involve

protection within the framework of author's rights as they are at present defined by the Rome Convention."

The Committee of experts was able to agree on a number of principles capable of serving as the basis of a scheme of international regulation. It did not, however, succeed in defining the important basic principle of what is the nature of a performer's right. Is it a right merely to remuneration for work done, or has it the character of a res. i.e., of property with economic value which has an independent external existence and can, therefore, be apprehended, possessed, and enjoyed by ~~third~~ parties. The great difficulty in the way of the latter interpretation is that a broadcast performance of which no record is made has at no time any tangible form which can be reduced into possession. The difficulty is closely united to that of broadcasters in seeking to establish a droit d'emission which would enable them to control the use to which their programmes are put, a control which may be insisted upon one day by artists when television is further developed for public entertainment.

CHILD ARTISTS.

The employment in broadcasting of children, who are defined as persons under Fourteen years of age is, as might be expected, subject to certain restrictions, but compared with other employers of children, the Corporation is in a favoured position. By Section 29 (1) of the Children and Young Persons Act 1933, the Corporation is exempted from the restrictions on the employment of children for or the taking part by children in performances which are broadcast provided the children are over Twelve years of age, and the public are not admitted to the performances on payment.

In the case of children under Twelve years of age, the situation is not quite so clear and, although from a practical point of view, the use of such children for broadcasting is very rare, it is not unknown and, therefore, requires to be considered. Section 18 (1) of the Children and Young Persons Act 1933 prohibits the employment of a child under Twelve years of age, and a child can only be used for broadcasting if under Twelve years of age on terms other than those amounting to

employment. There is no definition of the word "employment" in the Act, and it must be interpreted according to the natural and ordinary meaning of the word. Thus it is considered that it would be committing an offence under the Act if the Corporation entered into a Contract for a child under Twelve to appear regularly for reward, but it is not thought that any offence would be committed if the child were invited to take part in a broadcast performance gratuitously, subject to the provisions of Section 22 (2) which restricts the number of permissible performances to not more than six in the preceding six months, and requires that the net proceeds of the entertainment shall be devoted to purposes other than the private profit of the promoters.

Following the interpretation in Section 30 of the Children and Young Persons Act 1933, there is no objection to the broadcasting of children, whether over or under Twelve years of age, who form part of a choir taking part in a religious service.

When it is desired to employ children between Twelve

and Fourteen years of age for broadcasting performances to which the public are admitted on payment, it is necessary for the Corporation to observe the regulations of the Local Education Authority, but no Licence can be granted for any performance on a Sunday. In the case of young persons of Fourteen or under Eighteen years of age, it is open to the Local Authority to prescribe Bye-Laws for their employment under Section 19 (1) of the Children and Young Persons Act 1933.

Minors of Eighteen but under Twenty one years of age are subject to the contractual disability that any contract of employment must be wholly for the benefit of the infant concerned, and can only be signed by the infant himself or a parent or guardian on his behalf.

STAFF.

In the Second Charter and Licence¹ there were only two positive directions as regards Staff. In the Charter, the Chief Executive Officer of the Corporation was called the Director General, and Sir John Reith was named as the

1. C.M.D. 2756 of 1926.

first holder of the office, probably as a compliment to him for his work as Manager and later Managing Director of the Company. In the Licence was reproduced the clause in the Company's Licence by which all employers of the Corporation were required to be British Subjects, except with the approval, in writing, of the Postmaster General. Apart from these two directives, the Corporation had a free hand in the management of its Staff. The Staff of the Corporation is, in many respects, unique, consisting of a large diversity of types; professional and business people, educationists, dramatists, novelists, journalists, artists and many others. Even on the technical side, there is a division into practically every branch of engineering.

In 1930, the question of Staff representation was considered by the Chairman (the Right Hon. J. H. Whitley) and the Board who decided that, in view of the great diversity in the types of Staff employed, any kind of Staff Association would be ineffective. This view was endorsed by the Chairman (Mr. R. C. Norman) and the Board

in the evidence submitted to the Ullswater Committee.

The Ullswater Committee did not, however, share the view of the Corporation, and expressed the opinion that some form of organised machinery was necessary, particularly on account of the large measure of freedom from direct Parliamentary control enjoyed by the Corporation in comparison with Government Departments. In its recommendations, the Committee foresaw, with a reservation by Mr. Attlee, that a comprehensive solution to the problem of Staff representation could not be found along Trade Union lines for the reason that the vast majority of the Staff was not likely, in any circumstances, to become members of Trade Unions, and that representation must, therefore, proceed on lines of one or more Staff Associations which could include all members of Staff. In regard to the conduct of Staff, the Committee recommended that members of the Corporation's Staff should follow the tradition of the Civil Servant in refraining from any prominent public part in matters of controversy, and that apart from this rule, they should be free from any control by

the Corporation over their private lives. In a document entitled "Observations by the Board of Governors of the B.B.C. on the report of the Broadcasting Committee 1935" and issued contemporaneously with it, the Board expressed their willingness to consider sympathetically any request for the formation of a substantial group among its Staff, but reaffirmed their doubt of the appropriateness of such a measure. They also declared that the Corporation did not concern itself with the private life of its employees except in so far as their personal conduct affected, or might affect, the performance of their duties as servants of the Corporation. In the Memorandum by the Postmaster General on the Report of the Ullswater Committee, the Government endorsed the recommendations of the Committee, and the Corporation agreed to put them into effect.¹ The Corporation also concurred in the suggestion of the Government that they should follow the general practice of the Civil Service in matters affecting the private lives of Staff.

Attention was focussed on this aspect of the

1. C.M.D. 5207 of 1936.

management of the Staff by the Case of Lambert V. Levita T.L.R. 1936 in the course of which there was some suggestion that unfair economic or moral pressure was exerted by the Chairman of the Corporation, Mr. R.C. Norman, on Mr. Lambert, the Editor of The Listener, to prevent him exercising his legal rights, the exercise of which would conflict with the interests, or supposed interests, of his employers. In view of the seriousness of the allegation, the Prime Minister, the Right Hon. Stanley Baldwin, after consultation with the Postmaster General, directed that an enquiry should be held, and appointed Sir Josiah Stamp, Sir Maurice Gwyer, and Sir Findlater Stewart to form a Special Board¹. The Board reported against the validity of the suggestion, but criticised the wisdom of some of the actions of those concerned in the case. As a piece of constructive advice, the Board suggested that the Corporation should take advantage of the experience of the Civil Service and establish a standing arrangement for consultation with the Treasury.

As a practical step in furtherance of the

1. C.M.D. 5337 of 1936.

recommendation regarding the formation of one or more Staff Associations, the Corporation sought the advice of Sir James Rae, of the Treasury, Mr. J.W. Bowen, General Secretary of the Union of Post Office Workers, and Mr. G.L. Darbyshire, Establishment Officer of the London, Midland and Scottish Railway. Their Report advocated the setting up of Joint Councils of the Whitley type, and recommended that Associations or Unions, which could establish a claim to represent particular grades or groups of staff should, subject to the views of the staff in regard to qualifications for membership, be accorded the right to nominate representatives to the appropriate Councils.

The Rae Committee touched on the position of Trade Unions only within the scope of a Joint Council machinery. A scheme for setting up such machinery was worked out between the management and the staff, and under this scheme, it was proposed to restrict membership of the Joint Council to members of the staff. The scheme had, however, to be postponed on the outbreak of war before it

had been formally adopted. The B.B.C. Staff (Wartime) Association then came into being, the membership of which was thrown open to all categories of established and unestablished staff. In 1946, this Association had a membership of, approximately, 3,000, and received encouragement from the management. There was, in addition, a smaller Association with a membership of about 800 called the Association of B.B.C. Engineers, membership of which was open to all professional members of the Engineering Division. These Associations worked closely together, and the Committees of both Associations held joint meetings with the Director General. On 23rd June 1945, they were amalgamated into a single Body.

This did not entirely satisfy the Government which, in the White Paper presented to Parliament in July 1946¹ by the Lord President of the Council and the Postmaster General, expressed the view that "there should be adequate machinery between the Board of Governors and the staff for the settlement of negotiation of terms and conditions of employment with provision for reference to

1. C.M.D. 6852 of 1946.

arbitration in default of such settlement in such cases as may be agreed: and for joint consultation regarding the operational efficiency of the Service." The Government proposed that the new Charter should impose upon the Corporation the obligation to consult with accredited representatives of such organisations representing the Staff as the Corporation should consider appropriate. This proposal had the support of Mr. Gordon Walker in the Debate in Parliament on Broadcasting on 16th July 1946. Mr. Gordon Walker, speaking as a former employee of the Corporation and as Chairman of the National Union of Journalists' Branch in the Corporation, felt that the proposed amendment to the Charter would mark a very great and important change, although he did not consider that the Corporation had been tyrannical¹.

Before the outbreak of war, members of staff were not disqualified from employment owing to their political opinions, but, on the outbreak of war, the question arose as to whether conscientious objectors or persons who had shown themselves to be opposed to the National War Effort

1. House of Commons. Vol. 425. Col. 1117.

should be employed on the staff of the Corporation. The Corporation decided that neither type of person should continue in the active service of the Corporation. In the case of conscientious objectors, a distinction was made in the treatment of Established and Unestablished members of staff, and in the case of Established Staff between those who were directed by the Tribunals set up under the National Service Acts 1939-1941 into non-combatant service with His Majesty's Forces or some other Service approved of by the Corporation and those who were directed to other kinds of work. In short, the policy of the Corporation was to make up the pay and suspend the Contract of Employment of only such male members of the Established Staff as were directed into and accepted approved service. All other categories of conscientious objectors, Established and Unestablished, were terminated, as were also any persons opposed to the National War Effort.

After hostilities ceased, the Corporation modified the policy towards conscientious objectors, and, in 1946,

it was decided that Established members of staff who had their Contracts suspended should be treated in all respects like other members of the staff returning from permitted War Service other than with the Forces. Established Staff who were dismissed were to be offered re-instatement with the benefit of normal increments of salary and the opportunity of rejoining the Pension Scheme. Unestablished Staff who were dismissed were to be considered for re-employment, if suitable vacancies arose. But, in the case of both Established and Unestablished conscientious objectors who disobeyed the directions of the Tribunals, no offer of re-employment was to be made except in exceptional circumstances.

CHAPTER SEVEN.THE CORPORATION and its FINANCES with SUBSIDIARY CHAPTER
on SPONSORING.

Financial history, with note of exemptions from ordinary taxation. History of Sponsoring.

FINANCE.

The Corporation's finances are governed by the conditions laid down in the Charter under which it was established, and the provisions of its Licence from the Postmaster General. There are many points of difference between the Corporation's finances and those of commercial undertakings, on the one hand, and of Government Departments, on the other. The most striking difference from the ordinary commercial concern is that the Corporation has no share capital or other resources. When it took over from the British Broadcasting Company Ltd., at the beginning of 1927, the assets of the Company were handed over to the Corporation without payment; all capital expenditure since incurred (amounting to very many times

the value of the assets then transferred) had to be financed out of income. This point is a very important one, as it was very restrictive on revenue expenditure which had to be limited so as to leave sufficient for the purchase of assets.

The Corporation has only two main sources of income. The chief income was ^{from} the share of the Licence fees collected by the Post Office, as is provided for in the Licence¹. Thus, it was ordained that (out of the aids and supplies appropriated by Parliament for that purpose) the Postmaster General should deduct 12½% from the gross sum received from the 10/- Licence fees for the cost of administration and expenses.

Of the remaining sum, he should pay to the Corporation:-

(a)	In respect of the first million Licences	90%.
(b)	In respect of the second million Licences	80%.
(c)	In respect of the third million Licences	70%.
(d)	In respect of all additional Licences	60%.

These payments were to be made monthly on the 16th day of each month. There was a proviso that, if the sums received should not prove sufficient to maintain an adequate service, the Corporation could, at any time after

the 1st January 1929, apply to the Postmaster General for an increase.

The other main source of income was the net revenue from Publications - that is from the Journals published in furtherance of the broadcasting service, particularly the Radio Times.

But the Corporation suffered certain diminutions in its apparent income from the two main sources mentioned. The amounts paid to the Corporation in any fiscal year represented a proportion of the fees collected in the preceding fiscal year. This system of payment in arrear made the Corporation's actual share of current Licence revenue considerably less than the nominal proportions set forth in its Licence¹. In addition, although the Government did not accept the recommendation of the May Committee on National Expenditure,² which was appointed on 11th May 1931 to consider all effectual means possible for reducing national expenditure, the Governors of the Corporation felt constrained to surrender the following sums out of Licence revenue to which they were entitled in order to assist in the financial crisis of the nation:-

1. C.M.D. 2756 of 1926.
2. C.M.D. 3920 of 1931

1931	£ 25,000.
1932	137,000.
1933	225,000.
1934	187,500.
1935	<u>62,500.</u>
	<u>£ 637,000.</u>

In their Annual Reports during the years 1931-34, the Governors noted that these emergency contributions made necessary severe economies in programme expenditure and retarded the natural growth of the Corporation to a certain degree.

But there is one further continuing factor which reduced the amount of income available for broadcasting purposes, and that was the incidence of Income Tax. Although the Corporation has no profits in the ordinary sense, as all revenue was applied to the maintenance and development of the service, Income Tax was levied on the amounts necessarily appropriated from revenue for capital expenditure, for other expenditures on improvements, and on the reserve necessarily made for Income Tax itself. In 1935, £120,000 was reserved for Income Tax, bringing the amount actually available for the service down to 5/2d. per Licence Fee of 10/- issued during that year; in the previous year or two, the proportion was less than

half of the Licence Fee.

The First Royal Charter¹ contained various financial provisions of constitutional importance. The Corporation was restricted in its borrowing to a total not exceeding £500,000 at any one time. It was authorised to receive all such funds as were passed to it annually by the Postmaster General or from other sources, and to establish sinking and reserve funds as might be thought expedient from year to year. Revenue might also, at the Corporation's discretion, be carried over from any year in which it was considered inexpedient to expend it. An annual statement was to be presented to the Postmaster General for approval, and the Accounts and general Report were to be audited by Chartered Accountants appointed by the Postmaster General. The Postmaster General could also appoint other persons with full liberty to examine the Corporation's Accounts at any time.

The first alteration in the financial arrangements as settled by the Charter and Licence of 1927 came on 11th June 1931, when a Supplemental Agreement² was made with the Postmaster General whereby the deduction of 12½% made by him from Licence monies for the cost of collection

1. C.M.D. 2756 of 1926.
2. C.M.D. 3884 of 1931.

and administration was reduced to 10% as from 1st April 1931. The Agreement also provided that a subsidy of £17,500 per annum for five years might be paid to the Covent Garden Grand Opera Syndicate (1930) Ltd. The payment of this subsidy was suspended from the end of 1932 by agreement with the Postmaster General following upon the financial crisis of 1930-32. The agreement was really a device for benefitting Covent Garden, and was only beneficial to the Corporation in so far as it enabled it to arrange for broadcast relays from the performances given in the Opera House.

No provision was made in the First Charter and Licence in respect of television broadcasts although the Corporation accepted responsibility for the start of the service. The first experimental transmissions started on September 20th, 1929, from the Corporation's London station using the Baird System, outside regular programme hours. From October 15th 1931, a regular half hour a day of television was broadcast inside programme hours, these still being produced by the Baird Television Company and transmitted by the Corporation in the interest of progress. From August 22nd 1932, the Television Service was taken

over and produced regularly by the Corporation on four mornings a week, still using the Baird Low Definition System. Following the Selsdon Report, this series of transmissions ceased on September 11th 1935¹.

On May 14th 1934, a Television Committee under the Chairmanship of Lord Selsdon, was appointed to consider the development of television, and to advise the Postmaster General on the conditions under which the public television service should be provided.

The Committee reported on 14th January 1935, and while the Report dealt mainly with technical and administrative problems, it also gave attention to financial requirements. It was anticipated that the cost of providing and maintaining the Alexandra Palace Station up to the end of 1936 would be £180,000, and it was considered that this sum should be borne by the revenues from the existing 10/- listener's Licence Fee, both the Treasury and the Corporation bearing a share of the amount necessary. The Committee considered other possible sources of revenue for what it was realised would be a very expensive service.

(a) Direct Advertising Programmes. It was not

considered advisable to take such programmes, but permission to accept sponsored programmes as in the existing Agreement and Licence with the Postmaster General should not be withheld.

- (b) The 10/- Licence Fee might be raised. This was considered unfair in that it might be some considerable time before the Television Service would be available to even 50% of the population.
- (c) A special Television Licence was not considered desirable at the present largely experimental stage of the new service, but might be adopted later. A retailer's Licence was also considered but not recommended, but it was hoped that the radio manufacturing trade might devise some means of measuring the growth of the new service.

By the end of 1934, the Corporation had operated eight years under its Royal Charter which was due for renewal in two years' time. The number of listeners' Licences issued was 6,780,569 and was still increasing rapidly. On 17th April 1935, a Committee of Nine Members was appointed under the Chairmanship of the Right Hon. The Viscount Ullswater, the terms of reference including the consideration of the finance of the broadcasting service, including broadcasting to the Empire and television broadcasting. The Committee reported on 31st November 1935¹. As regards financial matters, they

1. C.M.D. 5091 of 1936.

recommended inter alia that Licence Fees should remain at 10/-, the Post Office being allowed a percentage to cover costs of collection and other services, this percentage being subject to review and change, if necessary, every two years. The share of the remaining net revenue allocated to the Corporation for services other than television should be not less than 75%. The balance of 25% should be regarded as potentially available for broadcasting, including the Empire Services and television, and any surplus should be returnable to the State. As regards television, it was recommended that the finances of the Television Service should be reviewed by the Advisory Committee in the autumn of 1936 for a period of two years ahead, bearing in mind that the service should have a claim on the 25% of Licence revenue remaining after sound broadcasting had received its allocation. It was noted that, in the opinion of the Television Advisory Committee, the expenditure for 1936 was likely to coincide with the estimate of £180,000 given in the Television Committee's Report¹.

The Committee also made recommendations respecting

1. C.M.D. 4793 of 1935.

the provisions of the Charter. They considered that the limit on the capital borrowing powers of the Corporation should be raised from £500,000 to £1,000,000, and they felt it to be desirable that any major items of capital expenditure contemplated should be stated with the broad-casting estimates submitted annually to Parliament. The Annual Accounts and Report should continue to be presented to the Postmaster General as heretofore but in rather fuller form.

The Governors of the Corporation in their published Observations on the Ullswater Committee Report declared their readiness to present the Accounts in ^{the} simplified form suggested (this form was adopted in the Governor's Report of 1936). They did not, however, welcome the recommendation that major items of Capital Expenditure should have to be outlined in advance with the annual estimates. They pointed out that such an obligation was incompatible with the independence which, in other directions, the Committee seemed anxious to preserve.

In the White Paper of 26th June 1936¹ issued by the Postmaster General giving the Government's conclusions

1. C.M.D. 5207 of 1936.

following upon the recommendations of the Ullswater Report the following points of financial importance were covered. It was decided that the listeners' Licence should remain at 10/-, and that the percentage to be deducted by the Post Office for cost of collection and administration should be fixed at two yearly intervals. The Corporation should receive 75% of the sum remaining after this percentage was deducted, with the proviso that "if the Treasury should hereafter be satisfied that the income of the British Broadcasting Corporation is insufficient to support their services, including television and Empire broadcasting, it should be open to the Treasury to approve such increase as they may think appropriate in the circumstances in the proportion of receiving licence revenue payable to the British Broadcasting Corporation." This was an important innovation in that the Treasury now became one of the principal controlling forces affecting broadcasting. In the expiring Charter¹, the Postmaster General was the authority to whom the Corporation had to look for an improvement in their income.

The Government also decided that the Broadcasting

Estimates should be presented annually separate from the Post Office Estimates so as to give Parliament opportunities for discussing broad matters of policy. The Government did not, however, consider it desirable that Capital Expenditure proposed by the Corporation should be included in the Estimates although they added that they were assured that the Corporation would always be ready to provide information of a kind which could be given to Parliament on contemplated developments. Had the recommendation of the Ullswater Committee been accepted, it would have gravely injured the practical development of the Corporation, particularly as the Corporation had no compulsory powers or other legal privileges. The Corporation was required in the Annual Accounts and Report to show the current expenditure in the detail specified in paragraph 76 of the Ullswater Report, and it was noted that the Corporation had already adopted the recommendation.

In regard to the year 1936, it was decided that the Exchequer should be paid an arbitrary sum of £1,050,000 as its share of receiving licence revenue (exclusive of

Income Tax payable by the Corporation). The balance was to be payable to the Corporation after deduction of the Post Office expenses on the understanding that the whole cost of the Television Service for 1936 should be borne by the Corporation.

This was in accordance with the recommendation of the Ullswater Report¹.

The Second Royal Charter of the Corporation² contained some new provisions of financial importance. In the Objects Clause, the Corporation was given power, subject to the Postmaster General's approval, to acquire stock, shares or securities in Companies whose business was capable of being of assistance to the objects of the Corporation, and on its own account to enter into contracts of guarantee and indemnity. The capacity to borrow or raise loans on security was raised from £500,000 to £1,000,000. In the Licence and Agreement attached to the Second Charter³, there was also some fresh financial provisions. During the year 1937 and 1938, 9% of the Licence Fees was to be retained by the Post Office for the cost of collection and administration, and a sum was to be

1. 1. C.M.D. 5329 of 1936. para. 70.
2. C.M.D. 5329 of 1936
3. C.M.D. 5329 of 1936.

agreed during each successive two yearly period to cover these costs. Of the remaining sum, the Corporation were to receive 75%, the payments being made on the last day of each month in such instalments as the Postmaster General should think fit. Should the sums received by the Corporation be insufficient to provide an adequate service (especially in view of the responsibilities of the Corporation in connection with television and the services to the Empire and Overseas) representations might be made to the Treasury through the Postmaster General for the payment of an additional percentage of the 25% remaining. This Clause proved to be of practical importance in that the Corporation received an extra 8% in 1937 and 15% in 1938 as a result of representations made, thus bringing the Corporation's proportion of Listeners' Licence Revenue to 90%. There were clear indications that the continuing development of the Corporation's services would require a degree of expenditure in subsequent years that would make it impossible to meet the cost out of the receipts from listeners' Licence Fees.

Under the Second Royal Charter, the Corporation

continued its progress so that the number of licences increased from 7,960,573 at 31st December 1936, to 8,908,900 two years later passing the 9,000,000 mark in June 1939.

But external events were having their results on the development of the Corporation. In 1937, at the request of the Government, preparations were made for the start of the Spanish-Portuguese service, and the first broadcast took place on 15th March 1938. In the meantime, the Arabic Services for listeners in the Near East and Middle East were inaugurated on 3rd January. During the Munich Crisis of 1938, daily news bulletins to Europe were started on 27th September in French, German and Italian, and these bulletins were expanded into a twelve hours' service the following summer. The events which produced these changes culminated in the war declared on September 3rd 1939.

On September 5th 1939, in accordance with the terms of the Licence and Agreement of 1st January 1937, and the Supplemental Licence of August 3rd 1938, the Postmaster General gave notice that, in view of the existence of a

state of National Emergency, the Ministry of Information would take over all the powers except the technical ones formerly held by the Postmaster General. An Agreement dated 14th February 1940¹ between the Postmaster General, the Minister of Information and the Corporation provided that the Treasury should pay to the Corporation annually such sum as was approved as sufficient to carry on an efficient broadcasting service. The sum due to the Corporation for the seven months - September 1st 1939 to 31st March 1940 - would also be decided on the above basis. All licence monies would be retained by the Treasury until further notice.

Under the terms of this Supplementary Agreement, the arrangement by which the Corporation received a specified percentage of the receipts of wireless receiving Licences ceased on 31st March 1940. As from that date, the Minister of Information was obliged to pay to the Corporation such an annual sum as from year to year the Treasury, on representations from the Corporation to the Minister, approved as being sufficient for the services provided by the Corporation. The representation made by the

Corporation under the Supplemental Agreement included the presentation, in the autumn of each year, of estimates of the Corporation's expenditure during the following financial year. These estimates, after examination in the Ministry, were the basis upon which the amount to be provided in the Parliamentary Estimate for broadcasting received the approval of the Treasury. Under the war-time arrangements, the vote for broadcasting from 1940 onwards was in the form of a grant-in-aid paid to the Corporation by the Ministry of Information, the total payment being adjusted as necessary with the Treasury approval, in the light of the Corporation's actual expenditure as finally ascertained¹. The Corporation being placed under the double check of Ministry and Treasury were thus at a disadvantage as compared with a Department of the Government which was subject to the Treasury only.

In 1941, the amount granted to the Corporation by Parliament was £5,000,000, that being the amount approved by the Treasury on the basis of detailed estimates of the Corporation's expenditure during the year. But revised estimates prepared by the Corporation showed that their

1. H. of C. Vol. 377. Col. 1688.

total expenditure was likely to exceed the grant by some £2,400,000 of which the Corporation had only received ministerial approval for £1,200,000. The Treasury would only agree to make provision for the amount approved together with an additional £100,000 for new developments. As regards the further excess expenditure, the Corporation was informed that it would have to seek the Minister's approval before any payment could be made in respect of it and the amount would have to be included in next year's grant-in-aid. It was thus made plain to the Corporation that, during the war at any rate, it had no independence in its spending which, of course, also implied that it had no independence in its planning. During 1941, the tempo of the process of adapting the Corporation to war purposes was such that the Corporation had felt compelled to go ahead with schemes before obtaining approval for them. It was indicated that this could not be permitted, and, in order to meet the practical exigencies of the situation created by the war, special machinery was created whereby the Corporation was enabled to obtain a speedy consideration by the Ministry and the Treasury of

its schemes¹. The cost of the service rose to the annual total of £8,400,000 in 1942-43 and 1943-44 and fell by £100,000 to £8,300,000 in 1944-45. In the later years, a little less than half of the expenditure was on account of the Overseas Service.

As soon as there appeared to be a turn in the tide of war favourable to the Allies, a Committee was appointed under the Chairmanship of Lord Hankey in September 1943 to advise upon the development of the Television Service after the war. For the most part, the Report of this Committee, dated 29th December 1944, was technical, but financial recommendations were also made.² It was stated that the cost of the Television Service during the year ended September 1939 was equivalent to 11% of the Corporation's net Licence Receipts from the Postmaster General (£450,000), and on this basis, the Committee considered that the re-opening of the service after the war would involve an expenditure of, roughly, one million per year for the London Station only. With the opening of the six provincial stations visualised in the Report, the yearly costs would rise within a period of

1. H. of C. Vol. 419. Col. 221/2 19th February 1946.
2. S.O. Code, No. 70-418 of 1945.

five years to one and three quarter millions. During this period, a capital outlay of probably one and a half millions would be necessary. Here again, this latter figure might quite possibly be greatly increased by the cost of research, especially in view of the fact that the Government hoped television products might be a feature of the post-war export trade.

It was considered inevitable that the Television Service could not be made self-supporting for some time, even though it was most desirable that it should be made so as soon as possible. Until such a time, however, it was recommended that the financial arrangements between the Treasury and the Corporation should be settled as part of the general broadcasting service. Possible additional sources of revenue were considered. An additional Licence Fee of £1 was suggested for domestic viewers with the realisation that, for the first year or two, this could only yield a small sum as, before the war, the number of viewers did not exceed 20,000. A special Television Licence for Cinemas was also considered, and while it was felt that this might ultimately prove to be a source of

considerable revenue, it was difficult to formulate precise details at the existing stage of development. Finally, the possibility of financial assistance from Sponsored Programmes was reviewed. It was recognised that, as television was probably inseparable from sound broadcasting the question of Sponsored Programmes raised issues wider than purely financial ones. In any event, it was unlikely that commercial interests would be willing at first to incur large expenditure until the number of viewers had grown. It was felt, therefore, that this question should be postponed until the service had developed further.

On 6th November 1945, in a Parliamentary Question, Mr. Ernest Davies asked the Assistant Postmaster General what were the gross receipts for wireless receiving Licences for each of the years 1939-40 to 1944-45, and for the net receipts after deductions by the Post Office for the same years. Mr. Burke, in reply, gave the gross figures which ranged from £4,448,810 in 1939 to £4,833,942 in 1944. The deduction in favour of the Post Office for costs was only given for 1939-40 when it was £400,393, leaving a net amount of £4,048,417, as

subsequently the Corporation was financed by Grants-in-Aid¹. It was quite clear that the income from this source, having regard to the current rate of expenditure, would not be sufficient to meet the costs of the Corporation's services, including television, even allowing for drastic reductions in the European and Monitoring Services of the Corporation. On 22nd January 1946, the Minister of Information, Mr. E.J. Williams, announced that the Government had decided that the cost of all broadcasting services for "home" listeners must be met as before the war, from the proceeds of receiving licences. In view of the rise in costs, and of the additional expenditure involved in the improvement of sound programmes and the re-opening of television, an increase in the amount of the Licence was necessary, and the charge ~~for~~ for the Licence to receive sound broadcasts would be increased from 10/- to £1 a year at a fairly early date. A new Licence was to be introduced covering both television and sound reception at a charge of £2 a year. The date on which the new Licences would be introduced would be announced later.²

1. H. of C. Vol. 415. Col. 1217.
2. H. of C. Vol. 418. Col. 34.

It was announced by the Assistant Postmaster General, Mr. Burke, on 16th May 1946, as 1st June¹.

In answer to an earlier Parliamentary Question from Mr. Ernest Davies, the Lord President of the Council, Mr. Herbert Morrison, stated that the new licence charge was expected to increase the revenue from this source from about Five million to about Ten million, out of which it was estimated that the annual cost of sound broadcasting in the Home Service would be of the order of Seven and a half million, and that of television about Two million, while the cost of licence charges and other services performed by Government Departments, principally the Post Office, would cost a further £500,000. He made it clear that no part of the Overseas Services would be financed out of the increased licence fee of £1 per annum².

These estimates and principles were repeated in the White Paper presented ^{to} by Parliament by the Lord President of the Council and the Postmaster General on 2nd July 1946³. In the White Paper, it was stated that, during the development period, the cost of the Television Service would probably have to be met, to a substantial extent,

1. H. of C. Vol. 422. Col. 2086.
2. H. of C. Vol. 418. Cols. 323/4.
3. H.M.S.O. 158.

from the receipts from ordinary sound broadcasting licences although a new licence covering the reception of television and sound programmes for domestic use~~d~~ would be issued at an annual charge of £2. It was further stated that consideration was being given to the conditions which should apply in the case of licences for the reception of television programmes in Cinemas and other places where a charge is made for admission. It may be remarked in parenthesis that it is difficult to understand why consideration is not extended to all premises to which members of the public are admitted. Wherever public performances of their members' works are arranged, charges are made by such copyright owning organisations as the Performing Right Society and Phonographic Performance Ltd., whether or not there is a charge for admission.

A specific assurance was given that the cost of all the Overseas Services (Empire and Foreign) would be covered by an annual Grant-in-Aid adjusted from year to year to meet the cost of operating the services of a character and on a scale approved by the Government. No part of this cost would be a charge against wireless licence revenue

which, if necessary, would be available to the whole extent for the efficient maintenance and development of the Home Services of the Corporation, including television.

A few days after the publication of the White Paper, there was published, on 5th July, the first Report from the Select Committee on the Broadcasting Estimates.¹ In this Report, the Select Committee made specific recommendations, both in regard to the Overseas and Home Services of the Corporation. It was recognised that the Overseas Services was a specialised function undertaken on behalf of the Government, and it was felt that, on this account, the expenditure of money for the purpose should be subjected to a more rigorous external examination and control similar in degree to the financial scrutiny normally applied to the direct function of Government.

Apart from the special function of the Overseas Services, the Committee was not satisfied that external financial control over the Corporation's normal expenditure in connection with the Home Services had been exercised to the full and proper extent. It was felt that the Accounts presented to Parliament by the

1. H.M.S.O. 158.

Corporation, including their publications business, were not sufficiently detailed to enable Parliament to satisfy itself that the Corporation was being properly conducted and listeners were getting value for their money. There was also a fear that, under the existing arrangement by which Accounts for the Overseas and Home Services were not wholly differentiated, listeners would, in fact, be contributing to the cost of the Overseas Services. The Committee recommended that, as the Charter expired at the end of the year, the Treasury should give immediate attention to the points raised so that more satisfactory arrangements might be made which would enable Parliament to perform its proper functions in relation to the Corporation.

The final recommendation raised a fundamental issue about which there is as yet no certainty. By its present Constitution, the Corporation is an autonomous Institution but, as Sir Alan Barlow, Second Secretary, Treasury, stated in his evidence before the Committee, - "It has never been thought proper that the Treasury or the Post Office or the Ministry of Information should have ^{the} detailed

powers of inquiry into the expenditure and system of the British Broadcasting Corporation that they have with regard to an ordinary Government Office. The terms of the Charter are pretty explicit in securing a very large measure of autonomy. The theory was that they were given what was thought to be a reasonable sum, and they were left to be responsible for how they spent." This statement was, of course, in line with Ministerial pronouncements which have been quoted, and the only constitutional point of interest to be noted was that it was evidently intended by Sir Alan Barlow that the degree of independence which it was thought proper to concede to the British Broadcasting Corporation in respect of its normal functions under the Charter on behalf of Home Listeners could be extended to the functions it undertook, chiefly in its Overseas Services, solely on behalf of the Government. This principle was adopted in the White Paper.

The point was developed further in the Debate on the White Paper of 16th July 1946 when the Lord President of the Council, Mr. Herbert Morrison, stated that the Government were examining carefully the recommendations of the

Select Committee on Estimates and the extent to which these were consistent with the maintenance of the principle that financial control of the Corporation must not be taken to the point at which it can only be exercised by interference with the independence of the Corporation.¹

In another part of his Speech, he expressed the view that the Corporation had never been short of money, that it was not short at the moment, and that any Government which did not ensure, within reason, that it had ample funds at its disposal would be stupidly sacrificing one of the country's major industrial assets.²

Mr. Brendan Bracken

also touched upon both these points in the course of the Debate. He deplored some of the suggestions in the Report of the Select Committee, and said that he did not believe that the Governors of the Corporation should have to come to the House of Commons and explain their expenditure in great detail. He very much hoped that the Corporation would not be subjected to too much "grilling" on the subject of their expenditure.³ On the other point of the adequacy of the income of the Corporation, he considered that, at present, the revenues of the Corporation, on the

1. H. of C. Vol. 425. Col. 1099.
2. H. of C. Vol. 425. Col. 1092.
3. H. of C. Vol. 425. Col. 1109.

basis of Licence Income, were barely adequate, if television was included, to cover the cost¹. This view was supported by Mr. Burke, the Assistant Postmaster General, who, unlike his Leader, the Lord President, considered it to be very doubtful whether there would be any money left over in the course of the next few years, because the expenses of the Corporation were bound to go up as its programmes improved.²

A NOTE ON RATES AND TAXES AS THEY AFFECT THE CORPORATION.

Unlike the Australian Broadcasting Commission, the British Broadcasting Corporation does not enjoy any general exemption from rates and taxes.

Rates are an important item in the Corporation's budget, and an important issue was raised in the case before the West Dorset Assessment Committee at Bridport on September 12th 1941 when it was sought to establish that the Corporation was engaged in the transmission of power within the meaning of the Rating and Valuation Act 1925, Section 24, when broadcasting. This point, if established, would have made a very material difference to the rating

1. H. of C. Vol. 425. Col. 1106.
2. H. of C. Vol. 425. Col. 1176.

of the Corporation's transmitters, but on 13th September 1941, the Committee decided to uphold the objections of the Corporation.

From its commencement, the Corporation was obliged to pay Income Tax on its Trading Profits derived mainly from the publication of the Radio Times, but, under the Finance Act, 1937, Part III, Section (6), National Defence Contribution was declared not to apply to the business carried on by the British Broadcasting Corporation.

There was no specific exemption in favour of the Corporation in respect of Excess Profits Tax. As the Corporation was financed out of Grant-in-Aid rather than Licence Income during the war years, there was no liability incurred. The position might be changed if there should be any new form of taxation in substitution of the war-time Excess Profits Tax.

The Corporation was subject to Purchase Tax under Section 18 of the Finance No. 2 Act 1940, even on goods required for purposes connected with the prosecution of the war; and, similarly, Customs Duty was levied (under Section 3 of the Finance Act 1925) on such essentials as

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From 1927 to 1938 the Corporation contributed £1,215,306 in Income Tax.

gramophone records imported from abroad.

The Corporation was granted an exemption from Entertainment Duty imposed by the Finance (New Duties) Act 1916 in respect of its public concerts under Section 5 (d) which exempted entertainments provided for partly educational or partly scientific purposes by a Society, Institution or Committee not conducted or established for profit.

Taken broadly, it may be said of the Corporation that it has no privileges which distinguish it from the ordinary legal persona.

SPONSORING.

The use of broadcasting for advertising purposes may take one of two forms, either direct advertisements for which time is bought by the advertiser or programmes coupled with acknowledgments to the person or organisation by whose courtesy listeners are enabled to hear them. This latter form of advertisement is technically known as Sponsoring. In this country, the first form has never been permitted, but specific provision was made for the second in the first Licence to the Corporation of 1926¹

1. C.M.D. 2756 of 1926.

Clause 3 which permitted the Corporation to broadcast matter provided gratuitously by any person with or without an acknowledgment of such provision by means of the broadcasting service. Provision was also made for broadcasting the names of publishers and the prices of their goods in return for a consideration, and for using concerts, theatrical entertainments or other broadcast matter given in public in London or the Provinces.

Sponsoring came under review by the Selsdon Television Committee¹ which, like the Sykes Committee,² was troubled by the apparent difficulty of meeting the cost of the new service in the early stages. The Committee confirmed the view of the Sykes Committee in rejecting direct advertising as a means of raising funds, but saw no reason why sponsored programmes should not be applied to the Television Service, particularly during the experimental period of the service. The case of Sponsoring in all its aspects was reviewed by the Ullswater Committee,³ which recommended that the existing powers in the Licence should be continued subject only to the exclusion of the existing permission to broadcast the names of publishers and the prices of matter broadcast.

1. C.M.D. 4793 of 1935.
2. C.M.D. 1951 of 1923.
3. C.M.D. 5091 of 1936.

In the White Paper of June 1936¹, the Government rejected the recommendation of the Ullswater Committee, and proposed that "sponsored" programmes as well as direct advertisements should be excluded from the broadcasting service. In the new Licence of 1936², effect was given to the wishes of the Government (in Clause 3), subject to a proviso which mitigated somewhat the complete prohibition of sponsoring.

But there was another aspect of Sponsoring that claimed the attention of the Corporation, the Ullswater Committee, and the Government. That was the extra-territorial broadcasting of advertising and Sponsored Programmes from abroad (chiefly France and Luxemburg) for reception in the United Kingdom. Such broadcasting, being outside the British jurisdiction, could only be controlled by international agreement and negotiation. As long ago as May 1933, the matter was brought before the Council of the International Broadcasting Union which passed a Resolution to the effect that "The Council holds that the systematic diffusion of programmes or communications which are specially intended for listeners in another country and have been the subject of a protest by the

1. C.M.D. 5207 of 1936.
2. C.M.D. 5329 of 1936.

broadcasting organisation or organisations of that country constitutes an inadmissible act from the point of view of good international relations." It must be remembered, however, that the International Broadcasting Union was an organisation of broadcasters without official status except as an Advisory Body. Its resolutions could have no more than a persuasive effect, and were unsupported by any underlying sanctions.

Thus it was necessary also to resort to diplomatic action but this, although vigorously pursued for a time by the British Foreign Office, was finally given up in July 1937 as useless¹. The Post Office did not, however, relax its efforts, and at the World Telecommunications Conference in Cairo (January-March 1938) Colonel Angwin, (now Sir Stanley Angwin) the Chief Engineer of the Post Office, sought to obtain an international condemnation of advertising programmes on long waves. The British proposal was rejected, however, owing to the opposition led by the French Delegation².

1. B.B.C. Archives.

2. As an indication of European feeling on the matter it is worth noting that the British proposal was supported by only 8 European delegations out of 27 - those of three Scandinavian countries, Finland, Hungary, Holland, Poland and Portugal and negatived by ten - those of Belgium, Bulgaria, the Vatican City State, Spain, France, Latvia, Rumania, Czechoslovakia, the U.S.S.R. and Yugoslavia. Eight European delegations - those of Germany, Austria, Greece, Iceland, Ireland, Italy, Lithuania and Switzerland - abstained.

This was the last effort to bring international pressure to bear on the problem created by the broadcasting of advertising programmes to this country from abroad. The attitude of Members of Parliament to the problem was not unanimous, particularly as some of the members had vested interests in the traffic in advertising programmes in English¹. Apart from any such, Mr. Churchill, who early on, attached great importance to the value of broadcasting, took advantage of facilities abroad to broadcast in English for reception in the United Kingdom from Luxemburg in 1937, and Toulouse in 1938. The Official attitude continued, however, to be opposed to these broadcasts as late as March 1938².

Following upon the meeting at Munich, a modification in the official policy occurred in view of the dangerous international situation, and the chief offending station on the Continent, Radio-Luxemburg, was supplied, at the request of the Government, with special recordings and facilities for rebroadcasting Mr. Chamberlain's speech in English, and in specially prepared German versions. Facilities were also given for the broadcasting of other material considered advantageous by Great Britain and

1. H.L. Debates. Vol. 100. Cols. 40506.
H. of C. Vol. 308. Cols. 565 & 6.

2. H. of C. Debates, Vol. 333. Col. 1616.

France, the last occasion being in connection with the Royal visit to Canada in May 1939.

The outbreak of war brought all sponsored broadcasting to an end, but soon after the close of the war, Flight Lieutenant Teeling asked the Minister of Information in the House of Commons if he could state when Foreign Stations, which used to broadcast in English, would be able to resume activities and what steps the Corporation or the British Government were taking to obtain a controlling interest in any of the stations, especially Luxemburg.¹ To these questions, the Minister (Mr. Bracken) made a negative reply, although, subsequently, it was revealed that the Government were, in fact, attempting this very thing. The Government re-enunciated the established policy within the United Kingdom of setting their faces against the broadcasting of advertisements or sponsored programmes². Indeed, they went further, and promised active steps to prevent commercial broadcasting to Great Britain from abroad³. They also expressed the view in the White Paper of July 1946 that sponsored programmes would be out of keeping with the responsibilities of the Corporation as the Trustee of a Public Service. In the

1. H. of C. Vol. 409. Col. 815.
2. H. of L. Vol. 141. Cols. 1173-1209.
3. H. of C. Vol. 425. Cols. 171-3.
C.M.D. 6852 of 1946.

Debate on the White Paper of 16th July 1946¹, Mr. Herbert Morrison, the Lord President of the Council, disclosed that the Government were endeavouring, in co-operation with the French Government, to secure the use of the Luxemburg transmitter for the transmission of British programmes to Germany, and Austria. Such a use would neutralise any attempt to resume the pre-war activities of the station.

1. H. of C. Vol. 425 Col. 1093.
Col. 171/3.

CHAPTER EIGHT.THE CORPORATION and RELAY EXCHANGES.

History of development and changes in relations between Corporation and Operating Companies.

A relay exchange is an organisation for receiving broadcast programmes at a central point and distributing them after amplification over a wire net work to subscribers in their homes. There are different technical methods of wire distribution^X which carry different legal implications, but all wireless exchanges come within the jurisdiction of the Postmaster General by virtue of the Telegraph Act 1869 and the Wireless Telegraphy Act 1905. Under the former Act,

- X. 1. Radio Frequency. Each programme normally involves separate pair of wires but the subscriber only requires a loud speaker.
2. Carrier Frequency. This method allows several programmes to be superimposed on one pair of wires but the subscriber requires a receiving apparatus with valves.
3. Telephone. Carrier or radio frequencies can be used over telephone wires, but the subscriber requires a receiving apparatus with valves.
4. Electric Light and Power Mains. Carrier frequencies can be used over mains, but the subscriber requires a complex receiving apparatus.

high frequency signals are technically telegrams and can only be sent by Licence of the Postmaster General, and under the latter Act, each separate receiving station counts as a "wireless telegraph station" and the loudspeaker units used by subscribers are classed as "apparatus for wireless telegraphy." Further, under the Electric Lighting Act 1882, Sections, 3, 4, and 35, electric supply undertakers can neither themselves transmit nor give any authority for the transmission of "telegrams".

Relay Wireless Exchanges were first set up in 1925, and after a slow start, there was a considerable development so that by 1936 there were well over 300 Exchanges, and the number of subscribers was about 250,000. Owing to insecurity of tenure and uncertainty in regard to the future, numbers remained fairly stationary until 1939 when Relay Companies were granted a ten years' Licence, since when they have increased to a total of about 650,000 subscribers.

Local Authorities have a close interest in the system as most Municipalities by adopting the Public Health Act 1925, or some other Act such as the London Overground Wires Act 1933, have acquired the right to permit or prohibit the crossing of their streets with overhead wires. In some

towns, the Council have objected to the relay system altogether because of the disfigurement of overhead wires while others have drawn a substantial revenue from the Relay Company in consideration of the granting of its permission. In the case of the "mains" relay system, the Local Authorities are also interested, and between 1933 and 1935, repeated efforts were made to introduce legislation to give the Local Authority control. Clauses were introduced into recent Middlesbrough, Tynemouth and Edinburgh Corporation Bills and the Aberdeen Corporation Order to authorise the use of electric mains for relay purposes, but none of these measures was adopted.

The Corporation was interested from the beginning. The system was recognised as a potentially valuable supplement to broadcasting in areas where wireless reception was poor, but in the hands of commercial concerns, uncontrolled in their programme policy, and with no public responsibility, it was seen as conflicting with the principle of the Corporation's de facto monopoly in the public interest.

It was foreseen that, without control, it would be open to relay exchange proprietors to compile their programmes from the Corporation's programmes and from programmes broadcast from abroad, particularly advertising

programmes, in such a way as to upset the programme policy of the Corporation. From 1928 onwards, until the question came before the Ullswater Committee in 1935, the Corporation tried very hard to secure some control of the programme output of relay exchanges. Control was only possible through the terms of the Licence granted to proprietors of Relay Exchanges by the Post Office, but the Postmaster General refused to depart from the principle that he could not impose important restrictions on relay subscribers which were not imposed on the owners of wireless sets. The comparison was not wholly valid, as, in the former case, subscribers to Relay Exchanges had parted with their freedom of choice to the proprietor whereas the ordinary listener with a receiving set was genuinely free. The Postmaster General did, however, adopt a cautious policy, and in the special form of Receiving Licence for a Relay Exchange which was introduced in 1930, he inserted a "tramway clause" which gave the Post Office the right to take over any scheme at ^{its} ~~his~~ own valuation at the end of 1932 after two years only. Later, the Postmaster General extended the period of the Licence to the end of 1933 and, subsequently, to the end of 1936 when the first Charter of the Corporation was due to expire.

The Corporation made strong representations to the Ullswater Committee with considerable effect, as they recommended¹ "that the ownership and operation of Relay Exchanges should be undertaken by the Post Office and the control of their programmes by the Corporation." Lord Selsdon made a reservation in respect of this recommendation on the grounds (a) that the Relay Exchange system which it was proposed should be taken over by the State was an obsolescent system (i.e., radio frequency) and (b) that Relay Exchange subscribers ought to enjoy vicariously the freedom enjoyed by wireless set owners to receive the Corporation's programmes and foreign programmes at will². The Governors of the Corporation published an expression of satisfaction with the Committee's recommendation in their Observations on the Ullswater Report.

The subject of Relay Exchanges and their control figured largely in the House of Commons Debate on the Ullswater Report on 29th April 1936, and reflected a powerful campaign on the part of Relay Exchange interests against its recommendations. Following upon the Debate, the Government decided to extend for three years the system of licensing Relay Exchanges pending experimental work in distributing

1. C.M.D. 5091 of 1936.
2. C.M.D. 5091 of 1936.

broadcast programmes by wire to be undertaken in the meantime by the Post Office¹. This decision pleased no one, and its main effect was to put a standstill for three years on the development of commercial relay.

A new form of Licence was issued on 1st January 1937 which contained, among others, the following provisions of particular interest to the Corporation. The Relay Companies were required to provide a choice of two programmes of which one had to be a programme of the Corporation's, if available. This provision was intended to secure the distribution of a substantial proportion of the programmes broadcast by the Corporation, but it left it open to the proprietor of a Relay Exchange by selection to upset the programme balance as arranged by the Corporation, e.g., he could pick all the items of light entertainment from the National and Regional programmes and exclude all else. Then there was a prohibition against the distribution of political, social or religious propaganda from any station outside Great Britain and Northern Ireland; or the result of any Sweepstake in connection with a horse race. The first part of this prohibition was intended to prevent the proprietor of a Relay Exchange from exercising an

1. Memorandum by Postmaster General,
C.M.D. 5207. Para. 16.

influence in a particular direction, and the latter part of it was, of course, in line with the legislation directed against the Irish Sweep.¹ In another Clause, the Licensee was forbidden to accept any consideration for distributing any particular programme. This was intended to prevent any payment for the distribution of advertising programmes from abroad which would have conflicted with the principle adumbrated by the Government in the Postmaster General's Memorandum of June 1936² which proposed that sponsored programmes, as well as direct advertising, should be excluded from the broadcasting service of the Corporation. Finally, the origination of any programmes by the Exchange itself was absolutely barred, as if this had been permitted it would obviously have conflicted with the de facto monopoly of broadcasting enjoyed by the Corporation and confirmed in the wording of the Preamble to the Charter.

At the end of 1937, it was announced that the Post Office proposed to introduce an experimental wire broadcasting service at Southampton,³ but the project was abandoned after being rejected by the Southampton Borough Council which was influenced against the project by the wireless trade, acting through local radio dealers. Later, the

1. Betting & Lotteries Act 1934. Section 22.

2. C.M.D. 5207 of 1936.

3. H.of C. Vol. 330. Cols. 2154-5.

Government came to the conclusion that wire distribution was important from the point of view of National Defence, and in March 1939, the Postmaster General announced the following plans:-

- I. The Post Office would introduce a service for tele-:phone subscribers over the telephone lines.
- II. The Licences of Relay Companies would be extended for another ten years i.e., till 1949.
- III. The issue of a new form of Licence for Relay Exchanges which would incorporate (a) modifications regarding programmes supplied to subscribers: (b) a requirement that in time of emergency the Companies should transmit any announcements ordered by the Local A.R.P. or Police Authorities, and (c) a requirement that Relay Exchanges should be connected by wire with a B.B.C. Station. X.

When these proposals were debated in Parliament on 16th June 1939, they were attacked because they departed from the Ullswater Committee Report which had recommended the operat-:ion and ownership of Relay Companies by the Post Office, and the control of their programmes by the Corporation¹.

The first plan contained in the Postmaster General's announcement for a "radio by phone" was rendered impractic-:able by the outbreak of war, and in March 1940, the Govern-:ment postponed the whole project until after the war. The second plan was put into operation, and considerably improved

X. 'Times' Friday 31.3.39.
 1. Hg C Vol. 348. Cols. 1691-1778.

the prospects and capital value of the Relay Exchanges which had always been hampered by lack of security of tenure. The third plan was slow in developing as the terms of the new Licence took a long time to settle, and it was not issued until April 1940.

On the outbreak of war, as the terms of the new Licence had not yet been formulated, the Postmaster General on 9th September 1939, acting under Clause 4 (4) of the old Licence, sent instructions to all Relay Exchanges designed to meet war-time requirements. These instructions required all Exchanges distributing only one programme to include the Home Service of the Corporation at all times when available, and in the case of Exchanges giving more than one programme to include the Home Service of the Corporation on one channel when available. The distribution of Talks or other spoken items picked up from foreign stations was forbidden on account of the censorship and the distribution of items of any kind from enemy sources was forbidden. These instructions were cancelled on 1st January 1940 and were replaced by a new set which, in the case of Exchanges giving one programme, required the Corporation's Home Service to be given for 90% of the total weekly time, if available during

working hours, and all the Corporation's Home Service News Bulletins to be given during working hours. In the case of Exchanges giving more than one programme, the Corporation's Home Service was required to be given at all times when available during working hours. The old prohibition in regard to items picked up from foreign stations was repeated.

The new form of Licence was ready for issue in April 1940 and contained a new provision of particular interest from the programme point of view. Relay Exchanges were obliged to offer two programmes, one of which must be a programme of the Corporation, if available, and the other must be an alternative programme of the Corporation for at least 75% of the time during each week. When a choice of three programmes was given, two must be the Corporation's programmes, if available. All of the Corporation's Home Service News Bulletins broadcast during the working hours of an Exchange were to be included.

As regards the use of Relay Exchanges for the origination of messages in times of emergency, this was strictly confined to announcements by local police and A.R.P.

Authorities. Permission for this use was given during a

short period lasting only from 29th September to 6th October 1938, but it was again permitted by the Post Office in August 1939. Both before and after the last date attempts were made to enlarge the powers of originating announcements. On 18th April 1939, the Postmaster General was asked in the House of Commons why he refused to allow an appeal for National Service volunteers through the local relay service, and he replied that "relay exchanges are established for the sole purpose of relaying to their subscribers programmes broadcast by recognised broadcasting stations. They are prohibited by their Licences from transmitting local messages, and except during the September Crisis of 1938, all requests for an exception to be made to this rule have hitherto been refused. It has been decided to make arrangements for the use of Relay Exchanges for special announcements in time of emergency."¹

During the Debate in the House of Commons on 16th June 1939², the Postmaster General said that he had received a certain number of applications from the Local Authorities and others to use relay companies for certain local National Service purposes. The Postmaster General emphasised that it would only be on Government Authority in time of emergency that Relay Exchanges would be used for originating messages.

1. Vol. 346. Cols. 167-8.
2. Vol. 348. Cols. 6981.

He added that consultation had taken place with the Lord Privy Seal's Department and the Ministry of Labour, but that the conclusion was that the advantages were not sufficient to justify a departure from the rule. In the new form of Licence issued in April 1940, Clause 12 (1), the Licensee was forbidden to originate programmes or messages except during the continuance of the war, and under the directions of the Postmaster General.

The last of the changes in the new Licence proposed by the Postmaster General in March 1939 was the requirement that Relay Exchanges should be connected by wire with a Station of the Corporation. This was regarded as a safeguard against interruption of the service in war conditions and it was an advantage from the point of view of good reception. Some Exchanges were so connected, but owing to pressure on its lines, the Post Office was unable to carry out the arrangement in all cases, and in the Licence of April 1940, what was intended originally to be obligatory was made merely permissive.

As regards the future, the Chairman of Governors of the Corporation, on 14th November 1944, in a Speech to the Relay Services Association of Great Britain, which is the Body which represents Relay Exchanges, expressed the view that relay had come to stay.

That was also the view of the Relay Companies. In the Speech of the Chairman of British Relay Services Ltd., reported in the 'Times' of 10th August 1945, it was stated:- "All our control centres are linked by wire with the B.B.C. so that our subscribers receive the B.B.C. programmes over the wires direct from the Studio. At present, foreign programmes are picked up by the specially designed aerials at our receiving stations and distributed by wire to the subscribers' loudspeaker; eventually, we hope to be able to link our Control Centres by wire to foreign broadcast Studios." As regards the future, he stated:- "I am convinced that we stand on the threshold of great developments in our business, and in these developments, we are planning to keep in step with the B.B.C. Television is also very much in our minds. We are getting ready for this new and interesting field of home entertainment, and intend to offer Television as an additional service to our subscribers when programmes are made available in the areas we serve."

Some interest has been shown in Parliament in the future of Relay Exchanges. On 11th October 1945¹, Mr. Randall asked the Postmaster General:-

1. Whether it was proposed, on the expiration of the Licences of the Broadcast Relay Companies, to acquire the system for operation by his Department

in accordance with the recommendation of the Ullswater Committee in 1935.

2. Whether the development of a Post Office Service for broadcasting wireless programmes to telephone subscribers the plans for which were suspended in 1940, is now to be revived.

Mr Burke, Assistant Postmaster General, replying on behalf of the Government, stated that no decision had yet been reached on the questions raised.

The intentions of the Government were disclosed in Appendix 3 to the White Paper on Broadcasting Policy issued in July 1946¹ where it was stated that, having considered the future of wire broadcasting in this country, they had deferred a decision on the question of public ownership until nearer 31st December 1949 when the Licences held by Relay Companies were terminable. Some apprehension as regards the future was voiced by Mr. Gordon Walker in the Debate on the White Paper² who stated that wire broadcasting seemed to him a most potent and dangerous social instrument as "those in control of wire broadcasting can dictate what listeners shall not listen to, whether it is broadcast from at home or abroad." He felt that there was a strong argument for banning wire broadcasting altogether, and

1. C.M.D. 6852 of 1946.

2. H. of C. Vol. 425. Col. 1117.

pressed for action on the problem as soon as possible because of the growing power of the wire broadcasting organisations. It is to be noted that, during the war, the existing wire broadcasting concerns gained a substantial number of new subscribers, largely because of the difficulties of direct wireless reception in many districts under war conditions, the scarcity of domestic receiving sets, components and batteries, and the shortage of servicing electricians. An increase was also due to the removal by the Government of the war-time ban on new Licences for Relay Exchanges. At the time of the White Paper, subscribers to Relay Exchanges numbered some 650,000 (about $6\frac{1}{2}\%$ of the total number of holders of Wireless Receiving Licences) as compared with 260,000 at the outbreak of war, and are served by 274 separate Relay Exchanges.

CHAPTER NINE.THE CORPORATION AND TELEVISION.

History of development, and note of special problems relating to Television.

The ^{at}the request of the Post Office, the Corporation granted limited facilities to Baird Television Ltd., to transmit experimental programmes outside programme hours as from 30th September 1929. In August 1932, the Corporation took over the provision of all programmes, and reached the conclusion in 1933 that there was no future in the 30 line low definition service, but transmissions did not actually cease until 11th September 1935; in the meantime, a rival organization to Baird's, the Marconi - E.M.I. approached the Corporation with plans for a high definition system of television, and Bairds themselves gave evidence of experimental work on a high definition system. In these circumstances, the Postmaster General appointed a Committee, under the Chairmanship of Lord Selsdon "to consider the development of television and to advise the Postmaster General on the relative merits of

the several systems and the conditions under which any public service of television should be provided." The Committee reported on 14th January 1935^X and its findings may be considered under political, financial and technical headings.

The definition of television in the report was "the transmission by telegraphy and reproduction in transitory visible form of images of objects in movement or at rest", and the main recommendation of the Committee was that the operation of the Television Service should be entrusted to the British Broadcasting Corporation. The chief reason for this recommendation was that television was the natural adjunct of sound broadcasting, and the opinion was expressed that a time might be expected to arrive when a sound broadcasting service unaccompanied by television would be almost as rare as the silent cinema to-day.

An important innovation was made when it was recommended that, while the British Broadcasting Corporation should exercise control of the television service to the same extent and subject to the same broad principles as in the case of sound broadcasting, the

initiation and early development of the service should be planned and guided by an Advisory Committee appointed by the Postmaster General on which the Post Office, the Department of Scientific and Industrial Research and the British Broadcasting Corporation should be represented, together with such other members as might be considered advisable. The view was expressed, however, that the Committee should not deal with the compilation of programmes unless specifically invited to do so, and it was suggested that the Committee should continue for a period of five years.

The recommendation for the setting up of a Television Advisory Committee is to be contrasted with the recommendation of the Sykes Committee for the setting up of a Broadcasting Board¹.

It will be remembered that the Broadcasting Board ceased to function after the first few meetings for lack of material upon which to work. But ~~this~~ danger did not confront the Television Advisory Committee which had been brought into being largely at the request of the Corporation to assist in the solution of the difficult problem presented by the rival television systems of Bairds Ltd.,

1. C.M.D. 1951 of 1923.

and Marconi-Electric and Musical Industries Ltd. ¹.

The question of sponsored programmes was also considered in relation to television. It was noted that, while the proposal for direct advertisements in sound broadcasting programmes was examined and rejected by the Sykes Committee, the same Committee saw no objection to the admission of so-called "sponsored programmes" for which the Broadcasting Authority neither made nor received payment. "Sponsored Programmes" of this kind were specifically allowed under the Corporation's Licence, although the Corporation had, in fact, only admitted them on rare occasions. The Television Committee saw no reason why the same facilities should not apply to the television service, and it was remarked that it would be legitimate, especially during the experimental period of the service, if the Corporation took advantage of the permission to accept such programmes.

The question of the finance of the television service was an anxious one for the Television Committee, as television, on account of its very nature, must be more expensive than ordinary sound broadcasting. After a careful review of alternatives, it was recommended that,

R. A Statement to the Writer by Lord Reith.

during the first experimental period up to December 31st 1936, the cost of the television service should be borne out of the revenue from the existing 10/- broadcast listener's Licence. The possibility of a separate Licence for television was considered, and the question was left open for subsequent reconsideration in the light of experience.

On the technical side, it was recommended that a high definition service should be operated on the competitive systems developed by Baird Television Ltd. and Marconi-E.M.I. Television Co. Ltd., and that the first transmitting station should be erected in London.

An opinion was expressed in the Report¹ that a separate Licence would be required from the Postmaster General specifically authorising the Corporation to undertake the broadcasting of television. In the existing Licence, the Corporation was authorised to send broadcast matter by means of wireless telegraph stations, "the sending and receiving instruments of which shall be telephones."² The term "wireless telegraphy" was defined in the Licence by reference to the Wireless Telegraphy Acts of 1904 and 1925 in which it is described as "a

1. C.M.D. 4793 of 1935.
2. C.M.D. 2756 of 1926.

system of communication by any apparatus for transmitting messages or other communications by means of electric signals without the aid of any wire connecting the points from and at which the messages or other communications are sent and received." This definition would appear to have covered television, but the generality of it was qualified by the term "telephone", which was defined in the Licence as "any telegraphic transmitting or receiving instrument used or intended to be used for the purpose of transmitting or receiving spoken messages or communications or music by electricity." The opinion in the Report would, therefore, appear to have been well founded.

The consideration of the constitution, control and finance of television broadcasting, as part of the broadcasting service in Great Britain, was within the competence of the Ullswater Committee which, before issuing its Report on 31st December 1935¹ had the advantage of examining the Report of the Television Committee which was signed on 14th January 1935. The Ullswater Committee noted that the Government had decided, in accordance with the recommendation of the Selsdon Committee, that the Corporation should be charged with the duty of conducting

a television broadcasting service, and that the Television Advisory Committee, as recommended, had been set up under the Chairmanship of Lord Selsdon to assist the Postmaster General and the Corporation in the "planning and guiding" of the new service. They underlined, however, that what had been entrusted by the Government to the Corporation was no more than the conduct of a "public broadcast service of television", and that other applications of the use of television, such as the transmission for commercial purposes of visual images from point to point, remained solely the responsibility of the Postmaster General. As a matter of clarification, the Committee recommended that the Corporation should be specifically empowered to broadcast visual images as well as sound.

The Committee also made a recommendation that the extra cost of the television service should come out of the balance of revenue from wireless receiving licences retained by the Treasury after paying to the Corporation not less than 75% of the net revenue for purposes other than television.

The Ullswater Committee were not satisfied that the

income obtainable from the Treasury for the infant service of television would be sufficient, and they accepted the recommendation of the Television Committee that it might be necessary to resort to so called "sponsored" programmes in the early stages of television. Even so, they expressed the hope that any increase in the use of the power reserved to the Corporation in the Licence granted in 1927¹ "to broadcast matter provided gratuitously by any person with or without an acknowledgment of such provision by means of the broadcasting service" would be limited to the initial stages of Television Broadcasting. The Government, in the White Paper issued by the Postmaster General in June 1936², did not accept either of these financial recommendations. They fixed the Corporation's share of the net revenue from wireless receiving Licences at 75% for all services, including television, with a proviso that if the Treasury could be satisfied that more was needed, it would be open to the Treasury to approve an increase. They also barred out sponsoring as a source of income. These decisions had an important constitutional bearing, as they greatly

1. C.M.D. 2756 of 1926.
2. C.M.D. 5207 of 1936.

increased the influence of the Treasury over the broadcasting services of the Corporation which it was demonstrably certain could not be confined within the financial straight-jacket of the 75% of net revenue.

In the new Charter-Licence of 1st January 1937¹ television broadcasting by the British Broadcasting Corporation was expressly authorised in accordance with the recommendation of the Ullswater Committee. In the Object Clause 3 (a) of the Charter, it was stated that one of the objects of the Corporation was to carry on a public utility service of wireless telephony and television of any matter within the scope of the Postmaster General's Licence and with an eye to the television service, provision was made in paragraph 3 (i) for the production and acquisition of films. In the Licence² from the Postmaster General, Clause 1, there was a definition of the expression "television" as meaning the representation by telegraph in transitory visible form of images of persons or objects in movement or at rest, and of the expression "broadcast matter" as meaning, inter alia, images and any other matter transmissible by wireless telegraphy. In

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| 1. | C.M.D. | 5329 | of | 1936. |
| 2. | C.M.D. | 5329 | of | 1936 |

this way, the gap in the previous Licence from the Postmaster General, to which the Selsdon Committee drew attention, was filled. The intention of the Postmaster General to keep a firm grip on the new television service was illustrated by the fairly complete powers he reserved to himself in paragraph 5 of the Licence which stated that "the Corporation shall, in the conduct of the television service, observe and perform such conditions and restrictions, and do such acts and things whether in relation to the television stations or otherwise, as may be prescribed by the Postmaster General in writing."

The first public service of high definition television was inaugurated by the Corporation at Alexandra Palace in November 1936, and the transmissions were provided during alternate weeks by two rival systems, Baird and Marconi - E.M.I., but in February 1937, the Television Advisory Committee, which was appointed by the Postmaster General in 1935, came to the conclusion that the Marconi-E.M.I. system was the better, and that system was thereafter alone employed. This had important constitutional results in that, on the one hand, it created

a de facto monopoly in a particular company, and it diverted the energies of the Baird Company and others, including Scophony Ltd., towards the production of large screen television for use in cinemas with which both Scophony and Bairds were connected - the latter with the Gaumont British Corporation and the other with the Odeon Theatres Ltd. Both Companies were very active in publishing their objective, which was the same. On December 8th 1937, Mr. J.L. Baird, following upon the successful re-diffusion in a Cinema at Bromley in Kent of a television programme transmitted from Alexandra Palace the day before, announced that his eventual object was to get the backing of the whole entertainment industry for an application to the Postmaster General to licence an independent television service to cinemas. On 17th March 1938, Mr. Mark Ostrer, of the Gaumont British Corporation, spoke of television as "rapidly becoming a commercial proposition" at the meeting of Provincial Cinematograph Theatres, one of the largest subsidiaries of the Gaumont Company. In parallel, and to some extent in rivalry, on 30th November 1937 at the first Annual General Meeting of Scophony Ltd.,

the Chairman, Sir Maurice Bonham Carter, prophesied an independent television service to cinemas by the cinema industry, and at the second Annual General Meeting of the Company in 1938 repeated that "the cinema industry would not take its entertainment from the British Broadcasting Corporation, and that an independent television service for cinemas, in conjunction with the cinema industry, was bound to come." A crop of Parliamentary questions arose about this new development¹, and the Postmaster General replied that he had not been consulted about any proposal of the type suggested by Mr. Baird. Parliamentary interest continued, and a Parliamentary question of March 24th by Mr. de la Bere was made the subject of a leader in the Daily Film Renter (an organ of the Kinematograph Renters Society) which attacked the Postmaster General for impeding progress and not giving a definite ruling whether Cinemas might or might not, receive television programmes. This created a difficult situation for the Postmaster General and the Corporation. The former felt that a genuine demand existed which, if satisfied, would permit the poor man, who could not hope to possess an individual

1. Vol. 330 Cols. 798/9, 1340, 2194.
 Vol. 331 Col. 1046.
 Vol. 333 Cols. 833/4 and 1378.

receiving set, to enjoy some of the fruits of the television service. There was also a potential source of revenue to be considered, if Post Office lines were used, for the purpose of transmitting the programmes. The Corporation, on the other hand, believed that a service designed for reception in private homes could not, in many respects, be the same as a service adapted for the purpose of public entertainment.

The agitation also had the effect of intensifying opposition by organizations representative of the entertainment industry and artists to the development of television which they considered prejudicial to their established interests. The situation was reminiscent of that which confronted the sound broadcasting service at the time of its inception. Thus, at first it was impossible for the Corporation to purchase news reels and all the big film producers refused to supply any feature films even if out of date, and the Cinematograph Exhibitors Association was hostile to the showing of news reels to non-paying audiences on small screens for demonstration purposes. The principal circuit of

theatres, General Theatres Corporation used barring clauses in their contracts to prohibit artists from appearing for television, and the Society of West End Theatre Managers passed a Resolution condemning the broadcast by television of plays on Sundays. It also recommended its members not to give facilities for this purpose, and at the end of April, placed a ban on all actors appearing in televised plays at any time. They joined with the Theatre Managers Association, the Variety Artists Federation, Equity and the Musicians Union and others in a deputation to the Postmaster General, and the Television Committee on 17th and 23rd May 1939 to propose such limitations on the television service as would have strangled it. From another quarter, opposition came from the organisers of public spectacles and sporting events, of which the most important was the Jockey Club¹, to the televising of events under their control. But again, history was beginning to repeat itself, and the opposition was by no means complete. The British Movie-tone News Ltd. came to an arrangement for the use of its news reels, and was followed shortly after by the Gaumont

1. They later formed themselves into an Association for the protection of Copyright in Sport.

British Company. The ban placed on actors proved ineffective, and the televising of plays and musical shows was permitted by particular managements. The main difficulties which remained chiefly arose from the lack of legal protection for performers in respect of the use made of their televised performances for purposes of public entertainment and the lack of legal protection for the promoters of public spectacles and sporting events covering the use made of the televised representations of these spectacles in public.

The outbreak of war which led to the immediate shutting down of the television service also postponed the necessity for a solution being found. The Television Advisory Committee continued to function until February 1940 after which it lapsed having only been appointed for five years from 1935. In September 1943, a new Television Committee was appointed by the Government, under the Chairmanship of Lord Hankey, to propose plans for the reinstatement of the television service after the war. The Post Office and the Corporation, as the parties chiefly concerned, had two representatives each on the

Committee, and an important innovation was the appointment of a Representative of the Treasury. One of the handicaps under which the Corporation suffered in its earlier development of the television service was that it had not only to try to agree policy with the Television Advisory Committee but after that with the Treasury which was in a position to exercise a financial veto over any expenditure which it did not approve. At any rate, it could now be expected that the Treasury would confirm what its Representative accepted in Committee.

The Committee reported unanimously on 29th December 1944¹ and once again its Findings may be considered in their political, financial and technical aspects.

They expressed the view that the Minister responsible to Parliament for sound broadcasting should also be responsible for television, and endorsed the opinion of the Selsdon Committee that the relationship between the sound and television broadcasting services was such that they must be handled by the same authority e.g., the British Broadcasting Corporation.

They also proposed that a Television Advisory

1. D.O. Code No. 70 - 468 of 1945.

Committee which was first recommended by the Selsdon Committee and set up in 1936 should be recreated by the Minister responsible for broadcasting, and that it should include representatives of the Treasury as well as of the Post Office, the Department of Scientific, and Industrial Research, and the Corporation. Although in the description of its functions there was no reference to a responsibility in respect of programmes, which would have been a severe restriction of the Corporation's independence as an operating concern, the general scope was far wider than that of its predecessor. It was proposed that the Committee should give special attention to the problems of export trade, new developments, research, and the adoption of international standards of definition.

Careful consideration was given to the question of the use of television in the cinema which was becoming so acute before the war. It was fully realised that the interests of the cinema industry and a service of television for receivers at home were not identical, and that unless there was mutual adjustment, they might clash. The Committee felt that not only could a conflict be avoided but that collaboration for the benefit of both

interests was possible and were encouraged in this belief by the experience of sound broadcasting which, in the early days, was regarded as a threat by the Press and the entertainment industry, but which had been able to win a distinctive place for itself without prejudicing other interests. The Committee mentioned the difficulties which were likely to arise affecting programmes and copyright owners from the public showing of television programmes, but expressly left the solution of them to the Advisory Committee.

As regards Finance, it was clear that, in the early stages of development, it would not be possible for the television service to be self supporting, and that arrangements for its financing must be linked to arrangements for financing the Corporation's sound broadcasting services after the war. It was noted that, in 1939, 11% of the net receipts from wireless receiving licences was allocated for television, and that in view of increased costs, the contemplated rapid development of the service, and the prospect of the introduction of a new technical system the pre-war financial arrangements would require to be reconsidered.

Three possible new sources of revenue were considered (a) a Television Licence for domestic viewers: (b) a Cinema Television Licence, and (c) Sponsored Programmes. In regard to (a), it was recommended that there should be a special Licence for domestic viewers at an additional Fee of £1 a year. In regard to (b) without fixing any particular Fee, it was recommended that a Television Licence should be introduced at a special fee. But this question was bound up with that of the protection and compensation of artists, copyright owners and the promoters of public spectacles and sporting events, as it was clear that the use of television programmes in cinemas or other public places could not proceed without proper recognition of the various interests involved in the programmes. As regards (c), the Committee felt it was premature to reach a conclusion, and left the question open with the practical conclusion that very little could be expected from Sponsored Programmes in the early stages.

On the technical side, the Committee recommended the re-establishment of the pre-war service on the same basic standard (405 lines) and its extension as soon as possible

to the six most populous provincial centres connected by cable or radio relay links with the London Studio Headquarters at Alexandra Palace. They also emphasised the necessity for research to produce a standard of definition approaching that of the cinema, and the pooling of television patents in the national interest. Finally, they expressed the desirability of adopting a common international standard of definition which would, of course, be helpful from the point of view of the export trade from which there were great expectations.

The Government accepted the Findings of the Hankey Committee, and on 27th November 1945, the Minister of Information (Mr. E.J. Williams) announced the setting up of a Television Advisory Committee under the Chairmanship of Mr. Garro Jones, M.P., which, in addition to representatives of the organizations recommended, included representatives of the Board of Trade and the Ministry of Supply. These latter appointments emphasised the interest of the Government in the trading possibilities of television. The Minister of Information made clear that the Committee would report to him and not to the Postmaster General, and gave a definition of the functions of the Committee which

was in much more specific terms than that given to the original Advisory Committee under Lord Selsdon.

The definition was as follows:-

The Television Advisory Committee will advise the responsible Minister on television policy with particular reference to the following points:-

- (a) The planning, after consultation with industry, of the future television service, including the standards to be adopted:
- (b) The Co-ordination and, where necessary, the initiation of research into the principles and practice of television:
- (c) The encouragement of pooling of television patents and their use in the national interest:
- (d) The investigation of all developments on television at home and abroad, including its use for cinemas, bearing in mind the importance of the export trade and the desirability of the adoption of international television standards.

The London Television Service was re-opened by the Corporation on 7th June 1946, and according to the White Paper of July 1946, the Television Advisory Committee was holding frequent meetings to consider and report to the Postmaster General, as the Minister responsible for broadcasting in succession to the Minister of Information, on all problems connection with television. The Committee

also maintained close liaison with the radio industry and other interests concerned with the development of the television service. One of the first tasks of the new Committee was to settle the terms of the new form of Receiving Licence. The difficulty was to devise a formula which would exclude from the ordinary viewer's Licence those who intended to use the televised programmes for purposes of public entertainment. A compromise solution was decided upon, and in the new form of Television Receiving Licence, it was stated to be available "for a period ending on the date mentioned above or any earlier date on which a charge for admission to the premises shall be made by the Licensee or any other person." Thus all premises to which the public are admitted on payment of money would be excluded from the Licence, but other premises, such as public houses, hotels and tea shops would be covered. The position is not likely to be accepted for long by authors, composers, artists and the promoters of sporting events. It does, however, permit the poor man who may not be able to own a Receiving Set to enjoy some of the benefits of television to which, as the possessor of an ordinary listener's Licence for sound

broadcasting, he may be contributing. In the White Paper of July 1946¹, it was stated in regard to television that "the cost of this service will not be covered by the proceeds from the issue of the special Television Licences, and the cost of the service during the development period will have to be met, to a substantial extent, from the proceeds of ordinary sound broadcasting Licences." In the Debate on the White Paper, anxiety was expressed by Mr. Brendan Bracken about the rising costs of production². He stated that he did not think that sufficient care had been taken in estimating the heavy costs of television, and that although he expressed no personal opinion on the point, many had suggested that, in television, the Corporation might undertake advertising. Another difficulty allied to the costs of production was referred to in the same Debate by the Lord President, Mr. Herbert Morrison³, when he mentioned the non-co-operation of some members of the entertainment industry. He went on to express the opinion that television would not hurt them, and that it was for the good of the public that they should be able to see and enjoy these things.

1. C.M.D. 6852 of 1946.

2. H. of C. Vol. 425. Cols. 1106 & 1111.

3. H. of C. Vol. 425. Col. 1098.

In the case of AUSTRALIA, owing to a typographical error, there is some duplication in the numbers of the citations, but the citations are correct.

of constitutional interest.

Broadcasting in the United Kingdom differs markedly from the systems in operation in the Dominions, although at least two of them, Canada and South Africa, were adapted from the model of the British Broadcasting Corporation. Before coming down to constitutional differences, there are the great physical differences to be considered. The United Kingdom is territorially small and heavily populated, whereas the Dominions are large and, except in the cities, sparsely populated; and, in the case of Canada, there is a complete geographical junction with the United States of America and the powerful broadcasting systems operated in that country. These physical differences are reflected to some extent in the constitutional set-up in the United Kingdom and the Dominions which it is proposed to examine comparatively.

ORGANISATION.

The first interesting point to emerge is that the

British Broadcasting Corporation was the first State-owned broadcasting organisation, and began operation under its first Charter and Licence on 1st January 1927. It was followed in New Zealand by the New Zealand Broadcasting Board, established by "The Broadcasting Act 1931" which started operating on 1st January 1932; by the Australian Broadcasting Commission established by "The Australian Broadcasting Commission Act 1932", which started operating on 1st July 1932; by the Canadian Radio Broadcasting Commission, established by "The Canadian Radio Broadcasting Act 1932" which started operating on January 18th 1933, and by the South African Broadcasting Corporation, established by the Broadcasting Act 1936 which came into operation on 1st August 1936. With the exception of the British Broadcasting Corporation, all the other organisations were established by Act of Parliament, and their original Constitution could only be amended by fresh Legislation. Thus, the New Zealand Broadcasting Board was abolished on 1st July 1936 by the Broadcasting Act of 1936, which vested property rights and liabilities in the Crown. In Canada, the Canadian Broadcasting Corporation was established in place of the Radio Broadcasting Commission as from 2nd November 1936 by the Canadian Broadcasting Act of 1936. In Australia, the Australian Broadcasting Act of 1932 was repealed and superseded by the Australian

Broadcasting Act 1942, which continued the Australian Broadcasting Commission. The original Broadcasting Act 1936 of South Africa still stands.

Paradoxically, in spite of the ease with which an organisation incorporated by Royal Charter can be amended, the British Broadcasting Corporation between its first and second Charters showed less change than New Zealand, Australia or Canada from the shape originally given to them by Act of Parliament. In the First Charter the numbers of Governors was fixed in the first instance at five,^{A1} and in the Second Charter this number was raised to seven with powers of alteration reserved to the Crown.^{A2} In New Zealand, the Broadcasting Act 1936 abolished the original Board of three members and substituted a Director of Broadcasting working with the Minister of Telegraphs, thus creating in effect a government department of broadcasting. B1 In Australia, the original Australian Broadcasting Commission of five members of the Australian Broadcasting Commission Act 1932 was continued by the Australian Broadcasting Act of 1942, except that one of

A1. C.M.D. 2756 Charter Clauses 1 & 10.

A2. C.M.D. 5329 Charter Clause 10(iv)

B1. Broadcasting Act 1936, Clause 3, Section (i)

the Commissioners ~~must~~ be a woman, ^{C1} but there were other changes of great importance which will be noted later. In Canada the original Commission of three, ^{D1} as in New Zealand, was replaced by the Canadian Broadcasting Act of 1936 with a Corporate Body of nine Governors representing the principal geographical divisions. ^{D2} In South Africa the number of Governors of the Corporation was fixed at not more than nine and not less than seven members. ^{E1} In the case of Great Britain, Australia, Canada and South Africa the remuneration of the Governors and particularly the Chairman, was made substantial and by an Amending Act of 1944^X the Chairman of the Canadian Broadcasting Corporation was to be paid such salary as the Governor General might determine and he was barred from holding any other office or employment.

In the case of all the Dominions, until the abolition of the Broadcasting Board in New Zealand, the appointment of Commissioners or Governors was made by

- C1. 1932 Act, Clause 6(i) 2/1942 Act Clause 8(i)
 D1. 1932 Act, Clause 3(i)
 D2. 1936 Act, Clause 3 ^{Clause 2}
 E1. Broadcasting Act, ~~para II~~

X.

An Act to amend the Canadian Broadcasting Act, 1936. 8 Geo. VI, Chap. 33

the Governor General, which compared with the British Broadcasting Corporation in which the Governors are appointed by the King in Council on the advice of the Prime Minister.

The method of appointing the Chief Executive Officer of the broadcasting organisation varied between the different organisations. In the case of the British Broadcasting Corporation, with the exception of the first, the appointment of the Director General was a matter for the Corporation alone.^{A3} In New Zealand, under the Broadcasting Act of 1936, the office of Director of Broadcasting was created with the power of appointment reserved to the Governor General in Council.^{B2} In Canada, as in New Zealand, the appointment of the General Manager and Assistant General Manager was reserved to the Governor General but on the recommendation of the Corporation.^{D3} In South Africa no reference is made to any executive officer of the Corporation.

A3. C.M.D. 2756, Charter 6(vii) and 7.

B2. Broadcasting Act 1936, Clause 5, section (i)

D3. 1936 Act, Clause 6 & 7

A3. C.M.D. 5329, Charter 6(v) and 7

In Great Britain and the Dominions the Broadcasting Service carried on by each of the national organisations was in the form of a public utility service, but in each case there were differences of function. In Great Britain the Corporation enjoyed a de facto monopoly in broadcasting wireless programmes including those by television, but the broadcasting of sponsored programmes was generally speaking barred.^{A4} In New Zealand the Director of Broadcasting was made responsible for the administration of the Broadcasting Service under the control of the Minister of Telegraphs,^{B3} and by the Statutes Amendment Act 1943 the National Commercial Broadcasting Service created under section 2 of the Broadcasting Amendment Act 1937, was ~~repealed~~ ^{abolished} and the Commercial Broadcasting Service was placed with the other national stations under the Director of Broadcasting. In Australia the national (and not profit-earning) stations operated side by side with a

A4. C.M.D. 2756 Licence, Col.3
 5329 " Col.3

B3. 1936 Act Clause 5(i)

substantial number of 'B' class stations which are operated for private profit independently of the national stations. In Canada the Acts of 1932 and 1936 gave the national authority power to control broadcasting in the Dominion whether operated by stations belonging to the Canadian Broadcasting Corporation or privately owned.^{D4} Advertising programmes were permitted both from the Corporations and private stations, subject to the control by the Corporation. In South Africa, as in Great Britain, the South African Broadcasting Corporation enjoyed a de facto monopoly of broadcasting programmes, but unlike the British Broadcasting Corporation it was permitted to broadcast a limited amount of advertising programmes.^{E2} The question of obtaining revenue from commercially sponsored programmes is more fully explained under a separate heading.

D4. 1932 Act, Clause 8 & 9
 1936 Act, " 8 & 24

E2. Wireless Broadcasting Licence dated 1st Aug. ¹⁹³⁶ Col.17

RELATIONS WITH THE GOVERNMENT.

The next point of comparison between the organisations in the Dominions and Great Britain is the very important one of relations with the Government.

In many respects the British Broadcasting Corporation appears to be under a more explicit control than some of the broadcasting organisations of the Dominions. Thus, under the terms of the Licence to the British Broadcasting Corporation the Postmaster General, apart from being the authority for regulating all wireless traffic, is empowered to veto ^{A5}the broadcasting of any particular item, without the Corporation having any right to publicise the exercise of the veto. He is able to control by the wording of his Licence the shape of the broadcasting service, ^{A6} to approve of broadcasting hours, ^{A7} and to control the operation of the television service. ^{A8} In the Charter the approval of the Postmaster General is required before the Corporation can organise public concerts ^{A9} or take shares in any business connected with broadcasting. ^{A10} He has

A5.	C.M.D. 2756	Licence	Clause 4	iii.
	5329	"	"	4 iii
A6.	C.M.D. 2756	"	"	3
	5329	"	"	3
A7.	C.M.D. 2756	"	"	4
	5329	"	"	4
A8.	C.M.D. 5329	"	"	5
A9.	C.M.D. 5329	Charter	"	3f
A10.	C.M.D. 5329	"	"	3n

also the right to approve of the acquisition of any foreign concession,^{A11} and of the employment of anyone not of British nationality.^{A12} As has been explained elsewhere the apparently complete subservience of the British Broadcasting Corporation in the Charter and Licence has only been mitigated by Ministerial pronouncements in the House of Commons and in practice. As regards shortwave broadcasting overseas, which has become of great importance, specific mention of the Empire Service as the responsibility of the Corporation was made in the Objects Clause of the Second Charter.^{A13} With the advent of the War in 1939 the Empire Service was expanded and the European Service was developed as a separate branch whose policy was guided by the special organisation created by the Government and later by the Foreign Office. Responsibility for the service has now been returned to the Corporation subject

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|------|--------|------|---------|--------|--------|
| A11. | C.M.D. | 2756 | Charter | Clause | 5. |
| | | 5329 | " | " | 5 |
| A12. | C.M.D. | 2756 | Licence | Clause | 6. |
| | | 5329 | " | " | 7 |
| A13. | C.M.D. | 5329 | Charter | Clause | 3 (b). |

to its keeping itself informed of the Foreign Office point of view and this was confirmed in the White Paper of July 1946. The cost was met after the outbreak of War like all other broadcasting services of the Corporation by parliamentary appropriation. The authority for these expenses and developments was entirely Ministerial subject to parliamentary approval.

In New Zealand the position is simple. The Minister of Telegraphs was the Minister responsible for the operation of the Broadcasting Acts of 1931 through the New Zealand Broadcasting Board B4 and by the Broadcasting Act of 1936 through the Director of Broadcasting with the advice of an Advisory Council of not more than five members appointed by the Governor General in Council. B5

In Australia the situation is much more complex. Under the 1932 Act the Postmaster General was the Minister responsible for the operation of the Broadcasting Act, and the technical services necessary for the Broadcasting Services were supplied by the Postmaster General's Department. C3 The Commission was, however,

- B4. Broadcasting Act 1934, Clause 2 & 3
- B5. Broadcasting Act 1936, Clause 5 & 9
- C3. 1932 Act, Clause 44.

required to provide the necessary studio and office accommodation for the technical services and also to pay the cost of the installation and operation of apparatus required for outside broadcasts. The location of studios to be provided by the Commission was subject to the approval of the Postmaster General.^{C4} The Broadcasting Act of 1942, which repealed the Australian Broadcasting Commission Acts of 1932 and 1940 was wider in scope than the Acts ^{it} superseded. It concerned itself with the activities of the Australian Broadcasting Commission, commercial broadcasting which had hitherto been subject to the provisions of the Wireless Telegraphy Acts of 1935-1939, and the powers exercised by the Postmaster General. It also established a Parliamentary Standing Committee on Broadcasting. The Postmaster General's powers covering the activities of both the Commission and commercial companies can be summarised as follows:- The granting of licences to broadcast; the allocations of wavelengths and power; approval of all technical equipment; and the censorship of commercial programmes. The Postmaster General might

C4. 1932 Act, Clause 47.

also direct items, which he considered of public interest, to be broadcast free of charge, and he might prohibit the broadcasting of any matter. The exercise of these last powers must be in writing, and must be mentioned in the Annual Report of the Commission.

Of particular constitutional interest is the Parliamentary Standing Committee established by the 1942 Act^{C6} as its terms of reference were stated to be "To consider and report to Parliament upon every matter affecting broadcasting in Australia or Territories of the Commonwealth that either House by resolution refers to the Committee, or upon every other such matter referred to the Committee by the Minister" and the Act of 1942 goes on to say that the Postmaster General shall refer to the Committee any such matter which the Commission or the body known as the Australian Federation of Commercial Broadcasting stations request him to refer to the Committee. Thus the existence of the Committee enables Parliament, apart from the exercise of its powers through the responsible Minister, to investigate questions arising in either House and also gives the

C6. 1942 Act, Clauses 72-85

C5. 1942 Act, Clauses 36-40

44-52
62, 67
72-85

Commission

Australian Broadcasting Corporation and Commercial Companies access to Parliament by permitting approach through the Postmaster General to the Standing Committee. The Standing Committee consists of nine Members of Parliament of whom three are required to be Senators, the remaining six to be Members of the House of Representatives, each State to be represented. Full use has been made of this Parliamentary Standing Committee. In the year ended 30th June 1943 it dealt with a wide variety of matters referred to it by the Minister direct or by the Commission through the Minister. One of the matters referred to the Parliamentary Standing Committee at the request of the Commission was the important constitutional issue raised by the refusal of the Minister to approve of the proposed agreements between the Commission and Australian newspapers. The effect of this was that the Minister by the exercise of his right of veto on all financial transactions involving expenditure of more than £5,000 a year or extending over a period of more than five years was able to render nugatory the value of Section 25 of the 1942 Act which gave the Commission power to collect news. In

their report for the year ended 30th June 1944, the Commission expressed great disappointment with the results of the working of the Standing Committee. It was stated to have considered a wide range of subjects and issued five Reports not one of which was discussed by either House of Parliament. The result was that the Commission could not regard its reports as other than of persuasive value and to be disregarded if contrary to its statutory obligations. Some of the uncertainty which the Commission felt was dissipated by a pronouncement by the late Rt. Hon. John Curtin, the Prime Minister, on 12th April 1945 when he said "The Government recognises that the intent of the Australian Broadcasting Act is to create a position of special independence of judgment and action for the national broadcasting instrumentality. This principle holds good in spite of the necessary responsibility of the Commission to Parliament through the Minister, for the legitimate use of its funds under the terms of the Act and all the Sections of the Act should be read in the light of the above general intent of Parliament in the establishment of the Commission." This statement is not dissimilar to different Ministerial

pronouncements in the Canadian and British Parliaments. In its report of the year ending 30th June 1945, the Commission recorded two issues of major constitutional importance. Of all the Dominions, Australia was the only country in which the broadcasting authority had no control of the technical services involved which were supplied by the Postmaster General's Department. The second issue arose in regard to the future of short wave broadcasting to countries overseas. This function was formerly carried out by the Commission but was taken over by the Ministry of Information for war purposes in 1941, restored to the Commission in 1942, and in 1944 was retransferred to the Ministry of Information where it has since remained. Here again the Commission drew attention to the fact that all National Broadcasting Services in the British Commonwealth with the sole exception of the Australian Broadcasting Corporation are constituted the appropriate authorities for overseas as well as for domestic broadcasts.

In Canada the position is uncomplicated. The Minister of Marine^{D5} was the Minister of the Government

D5. 1932 Act, Clause 2c.
1936 Act, Clause 2d.

responsible for the operation of the Canadian Radio Broadcasting Act, 1932, but under the Canadian Broadcasting Act, 1936, he was substituted by the Minister of Transport. An important limitation in the powers of the Corporation was introduced by the 1936 Act, however, which was the bar on any contracts or transactions involving a sum in excess of more than \$10,000, or a term of more than three years without the consent of the Governor General in Council. This provision is to be compared with the one in the Australian Acts. On the other hand, the Corporation was equipped in both the 1932 and 1936 Acts^{D6} with powers of acquiring real property compulsorily, a facility which would have been of great use to the British Broadcasting Corporation which did not have it. As in the case of the British Broadcasting Corporation, the Canadian Broadcasting Corporation was debarred from seeking concessions from other Governments without the express consent of the Minister^{D7}. The Ministerial powers were those of general responsibility for the operation of the Act and in particular for the

D6. 1932 Act, Clause 11.
1936 Act. " "

D7. 1936 Act, Clause 7.

technical and regulatory control of broadcasting stations which were formerly subject to the control of the Commission under the 1932 Act^{D8}.

The Canadian Shortwave Service for Overseas, which in Australia is operated by the Australian Ministry of Information, is operated by the Canadian Broadcasting Corporation, but as a "fiscal operator on behalf of the Crown." No part of the Shortwave Service is financed from the normal revenues of the Corporation nor is it within the scope of the 1936 Act which explicitly provides and defines in Section 8 that "the Corporation shall carry "on a National Service within the Dominion of Canada." The Shortwave Service was established without reference to the Act of 1936 by Order in Council^{D9}, and all capital costs and current expenditure are met by Parliamentary appropriations.

In South Africa, the Minister of Posts and Telegraphs was the Minister made responsible for the operation of the Broadcasting Act, but there was a special provision which

D8. 1932 Act, Clause 8.
1936 Act, Clause 24.

D9. P.C. 8168 of Sept. 18th 1942.

empowered the Postmaster General, a civil servant in South Africa, to take over the broadcasting service if and when instructed by the Minister of Posts and Telegraphs^{E3} without regard to an emergency having taken place. This provision is to be contrasted with the provisions in the Licence to the British Broadcasting Corporation and the Australian Act of 1932, whereby the Postmaster General, a Minister in Australia and Great Britain, is empowered to take over the broadcasting service, but only in an emergency. The inherent danger of this provision was probably appreciated as in the operating Licence issued to the Corporation by the Minister of Posts and Telegraphs the Postmaster General was only entitled to enter and take over the broadcasting studios and transmitters in an emergency and if it is considered to be in the public interest by the Governor General in Council^{E4}. The same Licence also permitted the Minister of Posts and Telegraphs to require the Corporation through the Postmaster General to transmit news, information and other matter of

E3. 1936 Broadcasting Act. Clause 27.

E4. Wireless Broadcasting Licence dated August 1st 1936, Clause 19.

national public interest and the Police Authorities to require the broadcasting of Police messages^{E5}.

PROGRAMME RESPONSIBILITIES.

Having considered the question of Relations with the Government, the allied question of Programme Responsibilities falls to be examined. In the First and Second Chapters and Licences of the British Broadcasting Corporation there were no detailed provisions in regard to political speeches, but the ^{Postmaster General} Minister possessed a right of veto on any matter intended to be broadcast and any Department of the Government could request the broadcasting of any announcement or other matter. Apart from these and other ministerial powers referred to under the heading of relations with the Government, the Corporation had de facto an untrammelled responsibility for programmes reinforced by repeated Ministerial assurances.

In New Zealand under the 1931 Act, the Board was responsible for the programme service^{B6}, but in the Radio Regulations of 1932^{B7}, it was laid down that the Board's

E5. Wireless Broadcasting Licence dated August 1st 1936, Clause 16.

B6. Broadcasting Act 1931 Clause 15.

B7. Part 4, Clause 138, 1 & 2.

broadcasting stations should not be used for the dissemination of propaganda of a controversial nature, but should be restricted to matter of an educative, informative or entertaining character, and other items of general public interest, as might be approved by the Minister from time to time. The Licensee was required to supervise to the satisfaction of the Minister all material broadcast, and this provision was applied both to stations operated by the Board and to private stations. The effect of the 1936 Act^{B8} was to transfer these responsibilities to the Minister of Telegraphs as the designated Minister charged with the administration of the Act. The Minister was not bound by the Radio Regulations of 1932 but in his Policy he followed them closely.

In Australia, under the 1932 Act, the Commission was made responsible for the programme service from its national stations, and the Commission had power to determine to what extent and in what manner political speeches might be broadcast^{C9}. Under the 1942 Act, power was repeated in favour of both the Commission and

B8. 1936 Act, Clause 4.
C9. 1932 Act, Clause 16. 52.

the Licensees of Commercial Stations, but it was laid down that no speeches or other matter of a political nature were to be broadcast for two days prior to an election poll, nor any dramatisation of matter relating to candidates or parties between the issue of the writs and the close of the poll^{C10}. All matter, including advertisements, to be broadcast by a commercial station ^{was} were to be subject to such censorship^{C11} as the Ministry should determine. A special provision required that not less than $2\frac{1}{2}\%$ of programme time on National and Commercial Stations was to be devoted to the broadcasting of the works of Australian composers^{C12}.

The detailed provisions in the Australian Acts make an interesting comparison with the position in Canada. In neither of the Canadian Acts of 1932 nor 1936 are any overriding powers of censorship reserved to the Minister of Marine or Minister of Transport. Further, the Commission was made responsible in both Acts for the service of programmes originated by it, and also the programmes originated by private stations^{D10}. As regards political

- C10. 1942 Act, Clause 89 (i) & (ii).
- C11. 1942 Act, Clause 62.
- C12. 1942 Act, Clause 88.
- D10. 1932 Act, Clauses 8 and 9.
1936 Act, Clauses 8 and 22.

broadcasting, dramatised political speeches were prohibited under the 1936 Act, and the Corporation was obliged to assign time on an equitable basis to all parties and rival candidates. Under an analogous provision to that in the Australian Act of 1942, political broadcasts were forbidden on election days, and on either of the two days preceding. The names of sponsors and the political parties on whose behalf a speech is broadcast must be announced immediately before and after the broadcast^{D12}.

In South Africa, the Corporation was obliged to include in the Annual Report to the Minister of Posts and Telegraphs the name of every member of a political party by whom any political speech was broadcast, the name of the party of which he was the representative, the time allowed for the broadcast of the speech and the time at which the broadcast took place^{E6}. A provision peculiar to South Africa was the obligation on the Corporation to frame its broadcasting programmes with due regard to both English and African Culture^{E7}. There is no analogous

- D12. 1936 Act, Clause 22.
- E 6. 1936 Act, Cl. 24 - lg.
- E 7. 1936 Act, Cl. 14.

provision in the Canadian Acts where the population is divided into English and French speaking peoples.

ADVISORY COUNCILS.

In Great Britain under both the Charters of 1927 and 1937, the Corporation was given power to appoint Advisory Committees for such purposes as the Corporation should decide^{A14}. It will be remembered that in the Report of the Ullswater Committee in 1935 the view was expressed that the use of Advisory Committees might be extended by the British Broadcasting Corporation^{A15}, and that in their Observations on the Report the Governors of the Corporation did not welcome these views. They did, however, agree to modify their attitude in deference to the wishes of the Government, and this was given expression in the White Paper on the Ullswater Report^{A16}. The advent of the war reduced the number of these Committees, leaving only those with specialised functions. The Government in the White Paper of July 1946^{A17} re-emphasised the need for Regional Advisory Councils which should be broadly representative of

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|------|--------------|----------------|
| A14. | C.M.D. 2756. | Charter cl. 9. |
| | 5329. | Charter cl. 9. |
| A15. | C.M.D. 5091. | para. 41-46. |
| A16. | C.M.D. 5207. | (1936). |
| A17. | C.M.D. 6852. | July. 1946. |

the general public of the region, and whose members should be chosen like the Governors for their individual qualities and not as representatives of particular interests. These Advisory Councils must be sharply distinguished from the Television Advisory Committees appointed by the Postmaster General to advise him on television policy.

The New Zealand Broadcasting Act of 1931 provided for an Advisory Council to the Board consisting of eight members of whom five were to be drawn from North Island and three from South Island. The Council was to be appointed by the Governor General on the recommendation of the Minister, but before making his recommendations the Minister was required to give the several recognised groups of listeners an opportunity of nominating suitable persons as members of the Advisory Council^{B13}. Under the 1936 Act the existing form of the Advisory Council was modified in that the number of members was reduced to a maximum of five and while the appointment remained with the Governor General on the recommendation of the Minister there was no restriction on the territories from which

B13. 1931 Act, Clause 4 (i) & (ii).

they should be drawn^{B14}.

In Australia no mention was made of Advisory Councils until the 1942 Act when it was desired that the Minister should appoint an Advisory Committee in each State to advise the Minister in relation to all matters connected with broadcasting programmes or the exercise of any powers imposed by the Act or the Regulations on the Commission or the Licensees of Commercial Stations^{C7}. The main difference between this Council and that of New Zealand was, of course, that in the former case the power of appointment lay with the Governor General in Council, whereas in the latter it lay with the Minister concerned with the operation of the Act. On its own initiative, following the recommendation of the Gibson Committee of 1942, the Commission appointed Advisory Committees in all the States and their help was recognised as a valuable check on the Commission's own estimates of listeners' views. The Advisory Councils appointed by the Commission contrast as in Great Britain with those appointed by the Minister.

In Canada the position was different. The appointment

B14. 1936 Act, Clause 9 (i), (ii) & (iii).
C 7. 1942 Act, Clause 87.

of Advisory Councils in the Act of 1932 was the responsibility of unpaid Assistant Commissioners, not more than one of whom was to be appointed for each Province by the Governor in Council after consultation with the Government of the Province in which the Assistant Commissioner resided. It was the special duty of these Assistant Commissioners to organise and act as Chairmen of Provincial or Local Advisory Committees and to organise Advisory Committees or Sub-Committees for the purpose of co-operation with any private station that requested it^{D13}. In the 1936 Act, these elaborate provisions were swept away and it was simply left to the Corporation to make such Bye-Laws as might be considered necessary to provide for the appointment of Advisory Councils to advise it on programmes^{D14}.

In South Africa, under the 1936 Act as in Canada, the appointment to Advisory Councils lay with the Corporation. It was required to appoint Local Councils at Johannesburg, Pretoria, Cape Town, Grahamstown, Durban, Pietermaritzburg, Bloemfontain and such other places as might be

D13. 1932 Act, Clause 6.
D14. 1936 Act, Clause 12.

decided to advise the Corporation in regard to the broadcasting service and television^{E8}. The Corporation has

also appointed a Local Council at Kimberley and certain *Committees with specialised functions technical, religious and agricultural.* X

It will be seen that the Advisory Committees fall into two categories, those appointed by an authority outside of the broadcasting organization and those appointed by the organization itself. In the former case, they are a potential limitation on the freedom of the broadcasting organization and in the latter they are unlikely to develop a life of their own as their agenda will always be controlled by the appointing organization which is also in a position to choose the personnel.

NEWS.

Because of its special importance, the collection of news is given a heading of its own.

In Great Britain, specific power is given to the Corporation in the Charter^{A18} to collect news and information relating to current events in any part of the world and in any manner that may be thought fit and to establish and subscribe to news agencies. As described in an

E8. 1936 Act, Cl. 11.

A18. C.M.D. 2756. Charter 3 e.
5329. Charter 3 g.

X The Corporation co-operates with the National Council for School Broadcasting, an independent body responsible for the compilation of school broadcasts.

earlier chapter, the Corporation has made the freest use of these powers to build up what has often been described as the finest broadcasting service of news in the world.

In New Zealand no specific provision was made in the 1931 Act for the collection of news and in practice items of news were restricted to extracts from the daily newspapers at the discretion of the Broadcasting Board and by arrangement with the papers concerned. Under the 1936 Act, the position was still left undefined.

In Australia, under the Act of 1932, the Commission was given power to collect in such manner as it thought fit, news and information about current events in any part of the world, and to subscribe to news agencies^{C8}. In practice, the Commission has provided a full news service, including meteorological information and market reports. Use is made of British Official Wireless and the overseas news Bulletins of the British Broadcasting Corporation and also of the news service of the Australian Newspaper Proprietors' Association, British United Press and leading newspaper combinations. The Act of 1942 followed the lines of the Act of 1932 as regards the

collection of news, but in the case of Commercial Stations, it stated that the licensee of a Commercial Broadcasting Station shall not broadcast news published in a newspaper or collected in any newspaper or news agency except in accordance with an agreement as to payment and conditions between the licensee and the newspaper or news agency^{C9}.

In Canada, no specific provision was made in the 1932 Act for the collection of news. In practice, only a small amount of time was devoted to the broadcasting of news, and short bulletins were supplied free of charge by the Canadian Press Agencies. In the 1936 Act, however, specific power was given for the collection of news in any manner thought fit, and for the establishment of news agencies or subscription to them^{D15}. The Corporation's news is derived mainly from three sources, the Canadian Press, British United Press and by monitoring foreign news bulletins.

In South Africa, the Corporation was empowered to enter into agreements for the supply of news, but, be it noted, only with news agencies approved of by the Minister

C9. 1942 Act, Clause 64.
D15. 1936 Act, Clause 8 (41).

of Posts and Telegraphs, which is an important limitation.^{Eg}
 The Corporation has an Agreement with the South African Press Association, which gives the Association the sole right of supplying news for broadcasting.

FINANCE.

The final points which it is proposed to examine comparatively are those of Finance ^{and} or the subsidiary question of Advertising, which closely affect the liberties of the different organizations.

In the United Kingdom, the British Broadcasting Corporation had an unusually high degree of financial freedom until the war years 1939-46, when its income was regulated by Parliament and Grant under the direction of the Treasury. Before then, it received a definite share of the licence revenue^{A19} and the revenue from the sale of its own publications, but there were a few valuable concessions allowing for the provision of certain programme items. The Corporation had no privileges and was subject to all the normal taxation of a trading enterprise. Its accounts were subject to audit by Chartered Accountants^{A20}

A19.	C.M.D.	2756	Licence 18.
		5329	Licence 19 & 20.
A20.	C.M.D.	2756	Chapter 16.
		5329	Chapter 16.

Eg. 1936 Act Clause 13

approved of by the Postmaster General and were to be in an improved form following upon the White Paper of 1936^{A21}. Moreover, it was open to the Postmaster General to call for any information he required with regard to the financial transactions and engagements of the Corporation^{A22}. The Corporation's borrowing powers were increased from £500,000 to £1,000,000 as between the First and Second Charters and the Corporation was given discretionary powers in the investment of surplus funds^{A23}. There was no ^{limitation} ~~discretion~~ of any kind on capital purchases or leases of land or premises or in the length of its contracts. It is more independent in financial matters than any of the three remaining Dominion broadcasting organizations, apart from the special arrangements of the war years, and this has had a tremendously important effect on its development.

In New Zealand, under the 1931 Act, the main source of revenue was fees received in respect of receiving

- A21. White Paper 1936 C.M.D. 5207.
- A22. 2756. Charter 16.
- 5329. Charter 16.
- A23. C.M.D. 2756 Charter 3~~2~~.
- 5329 Charter 3p.

station licences^{B15} in accordance with Section 199 of the Post and Telegraph Act, 1928, and in the case of commercial stations, from the sale of advertising time. Under the Act of 1936, with the abolition of the New Zealand Broadcasting Board and the establishment of a Commercial Broadcasting Service under the Government, the cost of broadcasting was met by Parliamentary appropriation for the purposes of the Broadcasting Account. Within three months of the end of each year, the Minister is obliged to submit annual accounts to Parliament^{B16}.

In Australia, under the 1932 Act, the accounts of the Commission were subject to inspection and audit at least once yearly by the Auditor General for the Commonwealth, who was required to report to the Postmaster General the result of each inspection^{C10}. The main source of revenue for the Commission was from licence revenue and the proportion to be handed over was subject to revision by the Postmaster General. The Commercial Broadcasting Stations did not participate in the licence revenue but obtained their income from commercially sponsored programmes.

The Commission was empowered to issue debentures (not

- B15. Post & Telegraph Act 1928, Clause 199.
- B16. 1936 Act, Clause 18.
- C10. 1932 Act, Clause 31.

exceeding a total of £50,000) on conditions approved by the Postmaster General, principal and interest being guaranteed by the Commonwealth^{C11}. This power ~~was~~^{was} never ~~been~~ exercised.

The prior approval of the Minister was required before acquiring or disposing of property at a cost or value which exceeded £5,000, or before entering into a lease for a period exceeding five years^{C12}.

The Commission was exempted from rates and taxes or charges to which the Commonwealth was not subject^{C13}. This is a unique exemption in all the Empire Broadcasting Constitutions although in Canada the claim for exemption is made on the ground that the Canadian Broadcasting Corporation is an agent of the Crown.

Under the 1942 Act, these provisions were continued except that there was no longer any provision for the issue of debentures and the Commission was merely required to establish such sinking funds as the Treasurer of the Consolidated Revenue Fund considered sufficient^{C14}. The Treasurer might also make advances. The following new

- C11. 1932 Act, Clause 36.
- C12. 1932 Act, Clause 18.
- C13. 1932 Act, Clause 34.
- 1942 Act, Clause 34.
- C14. 1942 Act, Clause 35.

provisions were introduced:- The operations of the Commission were required to be financially self-supporting^{C15}.

The Commission was required to obtain the prior approval of the Minister before entering into any agreement involving an expenditure in excess of £5,000 or extending over a period of more than five years^{C16}. The unexpected constitutional effects of this provision have been discussed above under the heading of Ministerial Responsibility.

The Commission was required to furnish Annual Reports on its Broadcasting Services and Finances to the Postmaster General for presentation to Parliament^{C17} and the Commercial Stations were required to furnish Annual Financial Reports to the Minister in a prescribed form^{C18}.

In Canada, under the Acts of 1932 and 1936, the accounts of the Broadcasting Authority were subject to audit by the Auditor General, but were required to be in a prescribed form under the 1932 Act only^{D16}.

The main source of revenue was from the share of

- C15. 1942 Act, Clause 35.
- C16. 1942 Act, Clauses 20 & 21.
- C17. 1942 Act, Clause 42.
- C18. 1942 Act, Clause 67.
- D16. 1932 Act, Clause 18.
1936 Act, Clause 20.

licence revenue annually voted by Parliament, which by the Act of 1936 was the whole of the income from licence fees less cost of collection^{D17}. Revenue was, of course, also derived from sponsored programmes and privately owned Commercial Stations derived the whole of their revenue from this source. The Commission was not empowered to borrow money by the issue of debentures or any type of long term security^{D18}. The 1936 Act introduced some new and detailed provisions in regard to finance. al

The Corporation was required to include a statement of Accounts in the Annual Report to Parliament^{D19}. Monies received by the Corporation were to be deposited in the Bank of Canada or a Chartered Bank and might include, apart from a proportion of the licence revenue, an appropriation from Parliament, or advances from the Consolidated Revenue Fund^{D20}. The Governor General in Council was given power to authorise the Minister of Finance to make advances to the Corporation up to \$100,000

- D17. 1936 Act, Clause 14.
- D18. 1932 Act, Clause 5.
- D19. 1936 Act, Clause 20.
- D20. 1931 Act, Clauses 14 & 15.

for working capital and \$500,000 for capital works; the Governor General was given power to fix terms of interest and amortisation^{D21}.

It is claimed by the Canadian Broadcasting Corporation that, as a Corporate Body or Commission created by the Crown, it is an agent of the Crown and as such is exempted from provincial and municipal taxation under Section 125 of the British North America Act of 1867. Two decisions^X have been given affirming the Constitutional status of the Corporation as an agent of the Crown, but the matter will not finally be settled until there is a decision by the Privy Council.

In South Africa, the accounts of the Corporation are subject to audit by two or more professional Accountants appointed by the Minister of Posts and Telegraphs, and the chief items in the accounts require to be included in the Annual Report to the Minister of Posts and Telegraphs who, in turn, is required to table them in Parliament^{E9}. With the consent of the Minister of Posts and Telegraphs, the Corporation was permitted to borrow up to an amount

D21. 1936 Act, Clauses 16 & 17.

X. City of Toronto V. C.B.C. 1938 4 D.L.R.

City of Montreal V. C.B.C. 1941 2 D.L.R.

E9. 1936 Act, Cl. 23 & 24.

authorised by the Minister for the purpose of capital expenditure, reducing the debentures or otherwise repaying the loan in accordance with the Electricity Act 1922^{E10}. The Corporation was required to establish a General Fund and a Reserve Fund up to, but not exceeding, 20 per cent. of capital expenditure, for the defraying of replacement costs and extraordinary repairs. The Corporation was also required to establish a Development Fund from surplus after meeting expenditure and payments into the Reserve Fund. The Reserves were to be invested in Securities approved by the Minister^{E11}. The main source of revenue was, of course, from the licence fees and fines in accordance with the Radio Act 1926, as amended,^{E12} but revenue was also obtained from sponsored programmes. *The Corporation is exempted from Income Tax and certain Stamp Duties.*

ADVERTISING.

In Great Britain, as has already been noticed in the sub-chapter on the subject of sponsoring, advertising as a source of revenue has been barred to the British Broadcasting Corporation and as between the Licences of 1926 and 1936 there was a further reduction in the concessions

- E10. 1936 Act, Cl. 18.
- E11. 1936 Act, Cl. 19 & 20.
- E12. Radio Act 1926, Section 10.

^x Sections 29 & 30. Finance Act, No.17 of 1938.

which permitted the Corporation to use certain provided material for broadcasting^{A24}. The fact that Great Britain did not need to resort to commercially sponsored programmes is accounted for mainly by the fact that, until the outbreak of war in 1939, it was possible to raise a sufficiency of revenue from wireless licences. But in the report of the Hankey Committee on Television of 1945, the question of meeting part of the cost of the broadcasting service from commercial sponsored programmes was left open. Since then the Government have doubled the cost of the ordinary listener's licence and introduced a new and expensive licence for those intending to receive programmes by television.^X

No clause in the New Zealand Broadcasting Act of 1931 referred to advertising, but in the Radio Regulations of 1932^{B17} it was laid down that no form of advertising should be undertaken by any station unless especially authorised by the Minister of Telegraphs. This applied equally to stations of the New Zealand Broadcasting Board and to private stations. In practice, a general

A24. C.M.D. 2756, Licence 3.

B17. *Radio Regulations 1932* 5329, Licence 3.
 Clause 140.

x £ 2 p.a.

prohibition ^{of} by broadcast advertising on the National Service was applied by the Minister, but sponsored programmes, without direct advertising, were permitted in the case of private stations. By the Act of 1936 programmes intended to serve as advertisements for pecuniary benefit were prohibited except from Commercial Stations operated by the Minister^{B18}. By the Statutes Amendment Act, 1943 (New Zealand), Section 2 of the Broadcasting Amendment Act, 1937, which created a separate National Commercial Broadcasting Service was repealed and the Commercial Broadcasting Service was placed with the other national stations under the Director of Broadcasting. This meant, in effect, that the Government was prepared to increase revenue from broadcasting by undertaking a carefully regulated amount of commercially sponsored programmes.

In Australia, under both the Acts of 1932 and 1942, the Commission was not permitted to broadcast advertising, but it was allowed to announce its own future programmes, or a programme supplied by any organization or person

B18. 1936 Act, Clause 14.

engaged in artistic, literary, musical or theatrical productions or in educational pursuits, or to use programmes supplied by any organization, firm or person, provided that such programmes are not, in the opinion of the Commission, being used ~~other than~~ for advertising^{C19}. The commercial service in Australia was permitted to use sponsored programmes, but such stations were to be operated independently of the Commission and were not to derive any benefit from licence revenue^{C20}. Under the 1942 Act advertisements must not be broadcast on Sundays nor must they refer to any medicine unless approved of by the Director General of Health or the Medical Officer of a State authorised by him^{C21}.

In Canada, commercially sponsored programmes were permitted both from the Commission's and private stations, subject to the control exercised by the Commission and later by the Corporation which replaced it^{D22}. By regulation the Corporation has prohibited advertising between certain hours and on Sunday, as in Australia, and

- C19. 1932 Act, Clause 21.
- 1942 Act, Clause 24.
- C20. 1942 Act, Clause 61.
- C21. 1942 Act, Clause 61.
- D22. 1932 Act, Clause 8.
- 1936 Act, Clause 22.

also as in Australia, medicines cannot be advertised unless approved by the Department of Pensions and National Health^{D23}.

In South Africa in the Licence issued under the Radio Act, 1926^{E13}, and in terms of the Broadcasting Act, 1936, there was a restriction on the broadcasting of Advertisements for more than 10 per cent. of the total daily broadcasting time or for more than six minutes continuously in any hour without the written permission of the Postmaster General^{E14}.

- D23. C.B.C. Regulations 12.
- E13. Wireless Broadcasting Licence dated August 1st 1936, Cl. 17.
- E14. 1936 Act, Cl. 27.

CHAPTER ELEVEN.A SHORT ESSAY ON FUTURE DEVELOPMENT OF
BROADCASTING IN GREAT BRITAIN.

In the Thirteenth Annual Report of the Australian Broadcasting Commission for the year ended 30th June 1946, the following paragraph occurs. "The Commission recognises that the translation into legal phraseology of an Act which embraces the inevitably difficult relationship between national broadcasting and Parliament, between the proper primacy of Parliament, and the agreed principle of the Commission's legitimate independence of action, can probably never fully and satisfactorily be achieved. What is of over-riding importance, however, is clarity in regard to the general intent of the Act and agreement as to the spirit in which it is implemented. In this view, the Commission is reinforced by the knowledge that the Australian Act is in its essentials very similar to the Constitution of the Canadian and British Broadcasting Acts. In both Britian and Canada, it has been found more practicable to operate the Act in the light of its general intention rather than by meticulous revision of apparently conflicting sections."

There, apart from the mistaken reference to a British Broadcasting Act rather than Charter and Licence, you have a statement of the cardinal problem of what control should be applied to a State broadcasting organisation which is not a Department of Government. In Great Britain, the problem has not yet been solved.

The question of what degree of independence can be enjoyed by a State owned broadcasting organisation is complicated further by the fact that, in Great Britain, at any rate, it is called upon to perform certain judicial functions in respect of which it is independent but which, by their nature, impose important restrictions on its freedom. Thus, in the White Paper of July 1946, the Government have expressed the view that the maintenance of an impartial balance between parties in political broadcasting must be the responsibility of the Corporation. They also expressed the view that it was the obligation of the Corporation to broadcast an adequate and impartial daily account of the Proceedings in both Houses of Parliament. As a corollary to these judicial functions, it will be remembered that the Governors are appointed not as representatives of any particular interests or organisat-

:ions but of the public which they serve. There is also the specified prohibition on the Corporation against broadcasting its own opinions on matters of public policy.

The price of accepting these judicial functions has been the surrender of a personal point of view, which is, of course, fresher and more exciting to the listeners, and answers some part of the complaint frequently voiced by critics that, in handling political broadcasting, the Corporation is timid and lacking in courage. But the main limitation on independence is the over-riding powers reserved to the Government in the Charter and Licence of the Corporation. The only restrictions on the exercise of these powers are the various Ministerial pronouncements to which reference has been made, and the vigilance of Parliament, which is very much alive to the possibility of abuse, as was shown in the Debate on the suppressed broadcast on Regulation 18B. on December 18th 1941. But Parliament cannot always know when pressure has been exerted on the Corporation, with the powers of the Government held in reserve, and, speaking from knowledge of four Ministers of Information and seven Directors General of the same Ministry, Sir Frederick Ogilvie, one time

Director General of the Corporation, stated in a letter to the 'Times' of June 1946 - "What better could any Government wish for than to have at the end of the street a powerful and efficient instrument which has all the appearance of independence, but which, by the existing provisions of the Charter and Licence, it can control at will."

Sir Frederick Ogilvie advocated as a solution to the difficulty, abolition of monopoly and the introduction of competition. He did not say whether he meant that there should be set up a number of national broadcasting systems on a regional basis financed from the fees received from listeners' Licences or that a system financed from non-official sources, such as commercial advertising, should be created¹. If the former, it is not clear how the existing difficulties which he describes could be avoided.

The Government would still reserve over-riding powers, and it would be necessary, in order to preserve the validity of the judicial functions that have been described, to establish a careful balance in each separate broadcasting unit. Whether this would achieve a national balance in a small country like the United Kingdom, where each separate broadcast would be audible over the entire country, is a

little more doubtful. It is also difficult to see how better opportunities for artists and authors would be created as the total sum available from listeners'

Licences would not be increased, and the total of administrative and technical costs would rise steeply as compared with a single national system.

If, on the other hand, a system based on commercial advertising were adopted in Great Britain, it is doubtful if the funds available would be sufficient to maintain the broadcasting income from that source alone, and there is always the technical difficulty in connection with multiple services that the number of wave lengths available in Great Britain is severely limited. In the United States of America where the broadcasting services are financed from commercial advertising, these difficulties do not arise, as the funds available and the number of wave lengths make the position wholly different to that in the United Kingdom. But, taking the United States of America as an example of free commercial competition, the desirable results hoped for by Sir Frederick Ogilvie do not flow from the operation of broadcasting companies whose guiding policy cannot be primarily the national

interest but what best maintains the advertising revenue. This is borne out by the passage in the most recent Report of the Federal Communications Committee, which is an organ of the United States Government, quoted by Mr. Brendan Bracken in the Parliamentary Debate on Broadcasting on 16th July 1946, as follows:- "In addition to the general relaxation of advertising standards, there is abundant evidence that even the National Association of Broadcasters standards are being flouted by some stations and networks. Frequent examples of commercial advertising in excess of National Association of Broadcasters' standards were noted in all four networks, and all six stations in Washington D.C. The result of the study suggests that, on networks and stations alike, the National Association of Broadcasters' standards are as honoured in the breach as in the observance," and, later, - "According to data compiled by the Publishers' Information Bureau, more money is spent in network advertising of drugs and toilet goods than for any other products. The increasing identification of radio as a purveyor of medicines and proprietary remedies raises serious problems which warrant careful consideration by the Broadcasting Authority¹."

A third alternative, and it has been put forward recently by the Institute of Incorporated Practitioners in Advertising in a pamphlet entitled "Broadcasting", is that the Corporation should "make use of these provisions in its legal structure which would allow commercial broadcasting to be carried on under certain conditions." In making this proposal, they evidently accepted the fact that *neither* financially nor technically was it likely that parallel systems of broadcasting could be operated in Great Britain. But this proposal, if accepted, would not meet the point made by Sir Frederick Ogilvie in his letter to the 'Times', and it would bring about an inevitable conflict in programme planning between the national and commercial interests, which are by no means identical.

In the opinion of the Writer, the Government is correct in its view expressed in the White Paper of 1946 "that the present system of broadcasting is the one best suited to the circumstances of the United Kingdom." But the avoidance of the political danger described by Sir Frederick Ogilvie, and the strengthening of the position of the Corporation without destroying any of the ultimate powers of control by Parliament will depend principally

on two things. In the first place, the Corporation must never allow itself to be intimidated from following what it believes to be the correct course. It is interesting to note that, in the Parliamentary Debate of 16th July 1946, Mr. Brendan Bracken,¹ Minister of Information for most of the war years, Lady Megan Lloyd George², a Member of the Corporation's Talks Advisory Committee, and the Lord President of the Council, Mr. Herbert Morrison,³ all accused the Governors of the Corporation of being too susceptible to influence. This was denied by Sir Ian Fraser, who had only recently retired from being a Governor, but he was compelled, in the course of the Debate, to admit at least one glaring instance of the inability or unwillingness of the Corporation to take an independent line⁴. But, in assessing what is the desirable attitude for the Governors to adopt, it is instructive to note how handicapped they are compared with Judges, many of whose functions they assume. They hold office only for a short time, are modestly remunerated for their services, and still have an eye on a future career. The anxieties of Governors and the pressure on

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| 1. | Vol. 425. | Col. 1078. |
| 2. | Vol. 425. | Col. 1108. |
| 3. | Vol. 425. | Col. 1122. |
| 4. | Vol. 425. | Col. 1129. |

them would, however, be considerably relieved if the new Charter and Licence were to be so amended that if the reserved powers of the Government are exercised, the fact of it should be immediately notified to Parliament. At the moment, the Government is not obliged to announce or permit the announcing of the fact that it has vetoed the broadcasting of any matter unless in the notice intimating the veto it chooses to do so.

The second important factor in securing the integrity of the Corporation and encouraging the growth of its self-confidence is for Parliament to exercise self restraint from interference in the internal management of the Corporation. An illustration of the workings of this self restraint is shown by the Speaker's Ruling against Members raising points affecting particular items in programmes, and as an illustration in the opposite direction, one may cite the many occasions when particular Members of the Corporation's Staff have been discussed by name, contrary to the rule which protects Civil Servants. Another illustration of the lack of necessary restraint on the part of some Members of Parliament is contained in the Report by the Select Committee on the Estimates of the

British Broadcasting Corporation of 26th June 1946 which did not accept the proposition of Sir Alan Barlow, the Treasury witness, that "It has never been thought proper that the Treasury or the Post Office or the Ministry of Information should have detailed powers of enquiry into the expenditure and system of the British Broadcasting Corporation that they have with regard to an ordinary Government Office. The terms of the Charter are pretty explicit in securing a very large measure of autonomy." The Committee, on the contrary, formed the view that the Accounts presented to Parliament were not so informative as they might be, and that they were not satisfied that the external financial control exerciseable under the existing Charter had been exercised to the full and proper extent. Commenting on this Report in the Debate of 16th July, Mr. Bracken said, "I consider that some of the sentiments expressed in the Report of the Select Committee on British Broadcasting Corporation expenditure were wholly harmful to the freedom of broadcasting in this country."¹

The necessity to provide and allow for Parliamentary interest in broadcasting is recognised, and the situation might be met by the establishment of a Standing Committee

of both Houses on Broadcasting to which either Members of Parliament or the Corporation might have recourse in respect of particular items. The Corporation, for its part, is likely to have need of Parliamentary assistance in solving some of the acute problems in such matters as copyright which do, and will, confront it. The Lord President of the Council, or possibly the Speaker, might accept responsibility for deciding which items should be referred to the Standing Committee.

Another necessary adjustment in order to safeguard a spirit of independence and enterprise is that the period of the Charter-Licence of the Corporation should be extended beyond ten years. Charters can always be easily amended, and the present short term policy has a bad effect on forward planning and on the self-confidence of the Corporation which is subjected to a kind of vivisection every ten years. It must create an attitude of mind not wholly unlike that of the President of the United States of America, who is no sooner elected than he has to give his mind to planning the next election.

Having examined the position of the Broadcasting

Authority in relation to Parliament, and on the assumption that a monopoly of broadcasting vested in the British Broadcasting Corporation is the best system for the United Kingdom, the next question to be discussed is the effect of creating a monopoly. It is a truism that monopoly tends to breed monopoly, and so it has happened. Authors and composers have become closely organised in such Societies as the Society of Authors, Playrights and Composers, and the Performing Right Society, whilst artists have formed an almost "closed shop" in the Musicians' Union, Artists Equity and the Variety Artists Federation. This places authors, composers and artists in a strong position. Their position is so strong, in fact, that they could exact uneconomic terms from the broadcaster, who has no compulsory powers, and no right of appeal to such a tribunal as has been set up in Canada to decide cases in respect of musical copyrights. The situation is an increasingly difficult one, and the only solution will be for both parties to submit compulsorily if need be, to independent arbitration in the event of failure to reach terms. / The development of television has accentuated the difficulties, and it has created a form of public enter-

tainment in the case of large screen television which may not only rival the cinema and the theatre but which affords no protection to the artist or the promoter of sporting events whose entertainments are televised. The latter have formed themselves into an Association for the Protection of Copyright in Sport which, although the very name contains a misconception as it is impossible to see how a sporting event can ever be a literary or artistic work, illustrates awareness of the existing lack of legal protection. It is quite clear that Legislation on new lines will be required, possibly adapted from some such doctrine as that of "unfair competition" in the Civil Law of the United States of America, which has its counterpart in the "Concurrence déloyale" of the Code Civil of France.

Finally, a word may be of value on the organisation of the Corporation itself. Governments have consistently stressed the value of Advisory Councils, particularly in the Regions and as a contact between the broadcaster and the listener. But the usefulness of Advisory Committees can only be ensured by the Corporation permitting them a high degree of separate life with initiative in respect of the subjects for discussion, as it does in the case of

its specialised Committees, such as the Central Religious Advisory Committee, the Central Council for School Broadcasting, and the Central Committee for Group Listening. The Corporation should also be tolerant of any expression of views which are unsympathetic to it.

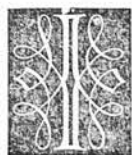
But much more important is the organisation within the Corporation itself of a division of functions between the Chairman and Board of Governors and the Director General and his controllers. The Director General of the British Broadcasting Corporation is a more powerful figure than the Managing Director of a large public company, as broadcasting is highly specialised, and he alone has complete knowledge of all its operations. As a check on the actions of the Director General of the Corporation, the Chairman of the Corporation should be a man of character and achievement who is prepared to devote a large proportion of his time to the Corporation, and who will make certain that he is consulted in all important matters of policy. The balance between Chairman and Director General is very largely one of personality. A weak Chairman and a strong Director General will result in the Board being a mere registry for the decrees of the

Director General, and the reverse situation will result in the Chairman and Board taking on executive functions which are not properly theirs, and which would destroy the objective outlook which they ought to possess as trustees in the national interest. It has become a convention that the Vice Chairman should be a man of legal and financial distinction, and this is probably a good thing, particularly if a large measure of freedom in its affairs is permitted to the Corporation.

As regards the staff of the Corporation. the position has now been reached where broadcasting is a professional job which a man must enter young in order to gain the necessary knowledge. It is also necessary that there should be reasonable security, and that the salaries and rates of service should continue to be rationalised on an ascertainable basis, as this is the only safeguard against paternalism. In the White Paper of July 1946, the Government has proposed that, in the new Charter, the Corporation should be required to consult with accredited representatives of staff organisations, and this must be regarded as a valuable constitutional development.

THE FREEDOM OF THE ETHER

By R. Jardine Brown



It is generally accepted as an ideal that there should be freedom of trade for the exchange of goods and services either within the Empire or the wider orbit of the world, and efforts have been made, and are being made, towards that end. In broadcasting there is a similar ideal of freedom of exchange of programmes and information, but here, paradoxically, the tendency is from an existing high degree of freedom towards exclusiveness and local barriers. A recent example of this tendency is the successful action taken by Mr. Petrillo, the leader of the Musicians' Union of America, to prevent the distribution by American networks of programmes originated outside Canada and the United States. If the situation is examined, the reason for this contrary tendency in broadcasting is to be found in the fact that broadcasting, which by its nature cannot be confined territorially, is in many respects in advance of the national and international law which must regulate its uses. Thus the recognition of rights in the broadcaster himself, in authors, composers and artists, is only slowly emerging and this uncertainty has made the parties concerned increasingly anxious about their rights and inclined to protect themselves by private contract. In other words, in the absence of legislation, they are having to create their own law, and, as might be expected, it is haphazard and individualistic. The early freedom of the broadcaster rested partly on the comparative insignificance of broadcasting as an instrument and probably to an even greater extent on an incomplete awareness of its implications by the author, composer and artist.

It is important to examine in some slight detail the position of the broadcaster, the author and the artist as the parties chiefly concerned in a free exchange. As regards the broadcaster no rights have been recognised in the broadcast as a literary or artistic work with a value in itself apart from the artistic materials of which it is composed, as compared with a gramophone record in which such a separate right has been recognised*. The difference between the two is not one of quality or degree of original creative effort (if anything the broadcaster makes the bigger original contribution as compared with the maker of a gramophone record), but that, in the one case, the artistic creation represented by the broadcast itself is fugitive and evanescent and, in the other, it takes a permanent tangible form. The difficulty resulting from

* *Gramophone Co., Ltd. v. Carwardine & Co.* (1934) 1 Ch. 450

the absence of a legal right attached to a broadcast is further emphasised in television, which represents broadcasting in its completest form. This difficulty arises from the inability of broadcasters to safeguard the interests of parties, such as the organisers of sporting events, from the exploitation for the purposes of public entertainment of televised broadcasts of these events. This may make it difficult for the broadcaster to obtain access to sporting events and entertainments of a similar kind of immense public interest unless a right is recognised in a broadcast and the broadcaster is in a position to control the use to which his broadcast is put. A similar position, which will be examined, arises in respect of artists who, apart from recording, are unprotected in the use which can be made of their broadcast performance.

Apart from the recognition of rights in a broadcast as such, the fact of broadcasting as constituting a public performance for copyright purposes has not yet received legislative recognition in this country and depends purely on the judicial interpretation of a Copyright Act passed in 1911 before a public service of broadcasting was in existence*. Internationally the situation is almost equally unregulated and undeveloped. The world of copyright is divided into two hemispheres with separate Copyright Conventions based on Berne and Havana. As an illustration of the lack of international regulation, the four Great Powers of the United States, Russia, Great Britain and China have no treaties either together or with one another.

Under the most recent Convention of Copyright held at Rome in 1928, to which Great Britain was a party with all of the Dominions, except New Zealand, it was decided by Article 11, *bis*, that:

- (1) Authors of literary and artistic works shall enjoy the exclusive right of authorising the communication of their works to the public by radio-communication.
- (2) The national legislations of the Countries of the Union may regulate the conditions under which the rights mentioned in the preceding paragraph shall be exercised, but the effect of those conditions shall be strictly limited to the countries which have put them into force. Such conditions shall not in any case prejudice the moral right (*droit moral*) of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement, by the competent authority.

The saving in favour of national legislations has not resulted in any action being taken in Great Britain to assist the broadcasting authority even when faced by the special exigencies of war, although certain action has been taken in Canada regulating the use of certain copyright musical works and setting up a permanent tribunal to which appeal

can be made in respect of copyright fees*. These Canadian provisions do not really contribute towards the solution of the difficulties in the way of a free exchange, but they illustrate very well the value of the overriding rights reserved to the state under the Article quoted.

The plain fact is that it is not possible for the freedom of the author and composer to be left unregulated if the freedom of the broadcaster is to be secured. Otherwise the author or composer can, by contract, impose conditions restricting the use to which the broadcast can be put and this right is a formidable one when it is considered that most broadcast programmes are a mosaic, comprising the work of many different authors. A broadcaster may obtain ninety-nine consents out of a hundred but the last party will have an effective veto. Authors or composers are thus in the position that while they cannot affect the natural conditions of broadcasting which make it impossible to confine it within territorial limits, they can, by contract, restrict the broadcast to one wavelength only, or they can forbid the simultaneous broadcasting of an original broadcast, and so create the local exclusiveness and barriers to free exchange characteristic of trade in its unfree state.

The situation of the artist or performer is more difficult than that of the author or composer, as his performance is not given the same legal recognition as is accorded to a literary or artistic work, following the same legal principle as denies a right in a broadcast to the broadcaster, who is its creator, while according a right in a gramophone record to its maker. The reason for the distinction is that once again the performance, like the broadcast, is fugitive and evanescent and has no permanent and identifiable form to which a right can be attached.

A conference of experts on Performers' Rights was held in 1938 under the auspices of the International Labour Office at Geneva but it did not advance matters very far. There was also a proposal that at the proposed Copyright Convention in Brussels, which was postponed owing to the war, recognition of performers' rights should be given in the new Copyright Convention, but this interposing of a performer's right in a convention concerned with copyright is really irrelevant and it is unlikely that it would have been generally accepted. The Advisory Committee appointed by the President of the Board of Trade in 1935 was not prepared to recommend more than that international recognition should be given to the principle contained in the Dramatic and Musical Performers' Protection Act of 1925 which made it an offence to record for commercial purposes the performance of an artist without his written consent beforehand.

Broadcasting is, of course, possible without the intervention of any

* Chapter 28, Statutes of Canada, 1936. An Act to Amend the Copyright Act, 1931

record, and in this state an artist is practically unprotected against exploitation, but sooner or later rights will have to be granted to a performer in his work quite apart from rights which he may create by private contract and which can never completely secure the position. By a new legal concept the rights will have to be attached to a work of creation, namely the performance, which, while recognisable at the time, has no permanent and identifiable form. If this should happen, it is suggested that, following the principle adumbrated in Clause 11, *bis*, of the International Copyright Convention of Rome in 1928, an overriding right should be reserved to the national legislation to fix the conditions upon which the performers' right might be exercised. The rights of the performer would be sufficiently protected if, once he had committed himself to give a broadcast, his rights were limited by national legislation and international convention to a claim for equitable remuneration according to the use made of his work; always bearing in mind that broadcasting of its very nature cannot be limited or localised in the same way as book publication, the exhibition of films or play production.

If the rights of authors, composers and artists were limited by the national legislation to a right of equitable remuneration according to the use made of their work once they had committed themselves to the act of broadcasting, this would constitute a rational recognition of the special nature of the broadcasting medium, and facilitate a free exchange of programmes. If the national legislation was linked to international convention world-wide in its scope, it would also secure to authors, composers and artists a fair return for the use of their work wherever it was used. These benefits to authors and artists should compensate to some degree for the loss of freedom implicit in the recognition of an overriding right in the state. The trend of modern social development is wholly towards that recognition, and the fact that certain rights were reserved to the state would carry with it the safeguard that the state would not part with these rights to a broadcaster unless it was felt that this would be in the interests of the state.